

Legal Profession and Ethics

Teaching Material

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CHAPTER ONE

INTRODUCTION TO LEGAL PROFESSION AND ETHICS

Introduction

The set of rules that regulate the conduct of members of the legal profession are called legal ethics. Legal ethics is one branch of professional ethics, which comprises of set of rules of conduct for professionals including teachers, accountant, engineers, physicians etc. Professional ethics belongs to a wider discipline called applied ethics which form as one branch of ethics or moral philosophy. Ethics, a branch of philosophy, deals with general moral principles and specific moral choices to be made by an individual. Another branch of ethics is the theory of moral obligations like utilitarianism, categorical imperatives and golden rule.

In this chapter, we will deal with these concepts. In doing so, we will discuss the meaning and characteristics of profession, the meaning and importance of legal ethics including its relation with philosophy and branches of philosophy like applied ethics and ethics, the importance of the theory of moral obligations for the students of legal profession and ethics, and moral issues and moral dilemma. In particular, the discussion on profession helps us to understand the meaning and nature of legal profession in chapter two. This chapter is divided into four sections. The first section discusses historical background; the second discusses some concepts like ethics, the third section deals with moral issues and moral dilemmas. The last section introduces the students to the theory of moral obligations.

The chapter does not give the whole account of moral philosophy. It only tries to show the relationship between ethics and legal ethics. Thus, students are encouraged to read ethics but they are not required to study it as the brief notes in this chapter suffice our purpose. For successful completion of this chapter, references for the supplementary readings provided at the end of this material will be of some help.

Objectives

By the end of this chapter, students will be able to:

- Discuss the origin of legal profession and ethics
- Define ethics, legal ethics, profession and professional ethics
- List the necessary characteristics of profession
- Discuss moral issues and dilemmas
- Explain the theory of moral obligations

1.1. Historical Background

Legal profession in its rudimentary form is traced back to ancient Greece. There were no special class of people who adopted advocacy as a profession in ancient Greece. The Athenian courts allowed the litigants to have the help of their relatives or friends or a person indirectly interested in the outcome of the case. These persons did not speak on behalf of the litigant. Their tasks were limited to composing speeches for free. They gradually began requiring fees for their service (N.S. Ranganatha 39).

Ancient Rome, the origin of civil law, is renowned for the legacy of its developed legal system. Lawyers occupied foremost place in Rome. The profession of an advocate was often a passport to the higher office in the state. Rome had non-official lawyers, *juris consulti* and *patroni*. Non-official lawyers gave opinions which were adopted by dispenser of justice. *Juris consulti* were paid for their service. *Patroni* appeared before Roman tribunals. They did not know much about the law. They obtain the knowledge necessary for their jobs from *juris consulti*. However there was no professional ethics for the advocates. For example solicitation for one self was considered right (N.S. Ranganatha 39).

In USA, written ethical standard did not exist in the legal profession prior to the twentieth century this was changed in 1906. The American Bar Association (ABA) formulated the canon of professional ethics to govern lawyers and did not entertain the notion of creating standard to

govern the conduct of judges. Instead ABA believed that judges should device rules to govern their conduct. In 1919 ABA decided to intervene and promulgate ethical rules for judges.

In India, legal profession existed before British rule. Actually, the legal profession as it exists today was created and developed during British period. After independence, the 1961 advocates act was promulgated. It amended and consolidated the laws relating to legal practitioners. It also provided constitution of Bar Councils and All Indian Bar. Chapter V, it deals with conduct of advocates (Rai 10).

In Ethiopia, legal profession existed in the customary law of different ethnic groups. For example, in the *gada* system of Oromos, 'the parties to the case litigate through their lawyers known as *abba alenga*' (Jembere 52). In Amhara tradition, the legal profession is traced back to *muget batatayyeq ser'at*. In this tradition, litigation is conducted orally and the parties appoint their advocate in the then court (G/Tsadik 32).

Before 1934 E.C., every person could represent parties to the litigation as an advocate. There was no licensing system. It was only after 1934 E.C. that persons were required to have permission to represent others (G/Tsadik 40). No source shows the existence of advocates' code of conduct before Regulation No. 57/1999 (ibid).

1.2 Ethics, Profession, Professional Ethics and Legal Ethics

1.2.1 Ethics

Ethics, like logic, metaphysics, etc, is one branch of philosophy. Ethics is the study of the general nature of morals and of the specific moral choices to be made by individuals in his the relationship with others. It is the philosophical study of morality. It is also called moral philosophy. As a field of philosophical inquiry ethics has three branches: metaethics, theoretically normative ethics and applied ethics (Callahan).

Metaethics is an analytical enterprise which involves trying to discern what moral terms (e.g. 'good,' , 'right') are generally understood to mean, how justification proceeds in moral

discourses and what we are doing when we share moral judgments with others (Ibid). “It is the attempt to understand the metaphysical, epistemological, semantic, and psychological, presuppositions and commitments of moral thought, talk, and practice” (08Ma). Metaethics does not actually involve making moral judgments. Rather metaethics involves attempting to discern precisely what is going on when moral judgments are made and uttered and what conceptual justification in moral discourse involves.

Theoretical normative ethics involves making moral judgments at most general levels because the task of theoretical normative ethics is to develop general moral theories. Theoretical normative ethics is classified into moral axiology, virtue ethics and the theory of moral obligation. Axiology includes theory of good and evil, and tries to answer the question “what is good?” For example, John Stuart Mill says *good* is happiness. Virtue ethics includes theories of what is counted as moral excellence in character. It tries to answer a question like “what kind of characteristics should we foster in our children?” Theory of moral obligation includes theories regarding what kind of action and practices are morally permissible and impermissible and what is morally required of all moral agents. One of such theories is utilitarianism.

Applied ethics has the task of resolving specific moral issues and morally problematic and concrete cases which arise in different areas of life. It borrows insights from metaethics and theoretical normative ethics but the concentration in applied ethics is on finding acceptable resolutions for moral problems of present and practical urgency. Professional ethics is one area of applied ethics. Thus, legal ethics is one of the sub-branches of applied ethics.

1.2.2 Profession

The word “profession” or “professional” frequently appears in many branches of Ethiopian Law. For example, Art. 41 of the Constitution guarantees every Ethiopian the right to choose his/her profession. Art. 2031 of the Civil Code provides for professional fault. Art. 5 of the Commercial Code refers to activities that are “professionally” carried out Art. 69 of the Criminal Code provides that acts done in the exercise of professional duty is not liable to punishment.

What is profession? Who is professional? Do these words have the same meaning in the above cited provisions?

Defining profession and professionals is difficult. Thus many authors, instead of defining profession or professionals, identified some features that can be taken as necessary for an occupation to be a profession. They are extensive, training significant intellectual component in the training and community services (Callahan 28). Extensive training takes a long period. This training must be in a particular field. Thus, a person who has completed a high school cannot be said to have undergone extensive training because there are no specializations at high school. For example, a person must have at least diploma to practice law before Ethiopian Federal Courts according to Proclamation No. 199/2000. Thus, university or college studies are extensive training.

The extensive training must involve significant intellectual component. It must enrich mental faculties of the trainee. It also requires caliber to undergo such training. Training for drivers mechanics, carpenters etc. does not involve intellectual component. It involves physical skills. On the other hand, training to, for example, teachers, accountants, and lawyers involves intellectual component. It focuses on intellectual tasks or skills.

Persons who have undergone through extensive training involving intellectual component provide services to the organized functioning of society. Modern complex society requires the services of many professionals. It needs, for example, the services of teachers, engineers, lawyers and physicians.

In addition, there are features common to most profession but these features are not necessary for an occupation to be a profession. They include process of certification or licensing, organization of members and autonomy of the professional in his or her work.

Profession is a vocation requiring advanced education and training (Garner 982). Professional is a person who belongs to a learned profession or whose occupation requires high level of training and proficiency.

1.2.3 Professional Ethics

Professional ethics is “the rule or standard governing the conduct of members of a profession” (Mortimer D. Schwartz 4). Professional ethics is ethics in the form of formally framed rules governing professional conduct or conduct of particular class of people. Unlike ethics which applies to every one, professional ethics applies to only members of the profession. Violation of professional ethics results in disciplinary measures.

1.2.4 Legal Ethics

Professional ethics for lawyers is legal ethics. It is “the standard of minimally acceptable conduct within the legal profession, involving the duties that its members owe one another, their client and the court” (Black’s Law Dictionary, 726). Chief Justice Marshal explains the aim of legal ethics in the following terms.

“The fundamental aim of legal ethics is to maintain the honor and dignity of the law profession. To secure the spirit of friendly cooperation between the bench and the bar in promotion of high standard of justice, to establish honorable and fair dealings of the counsel with his client opponent and witness to establish a spirit of brotherhood in the bar itself and to secure that lawyers discharge their responsibilities to the community generally” (Myneni 90).

According to Chief Justice Marshal, legal ethics maintains the honor and dignity of legal profession the in promotion of justice.

What is the relation ship between honor and dignity of legal profession to the promotion of justice?
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The loss of honor and dignity of profession of law results in disrespect for court and law. People lose confidence in courts. Grievances will not be brought to court. If justice prevails in the society, persons with begin to redress their grievances by individual actions. They take laws in their hands. This leads to the destruction of properties and lives — the demise of society.

To avoid the destruction of society, legal ethics requires the legal professional to be ethical. For example, they should not take part in a case involving conflict of interest, they should not reveal confidential information, and it also required them to cooperate with one another. The judges (the bench) the advocates (the bar) and prosecutors are not enemy. They should have a friendly cooperation to attain justice.

In addition, legal ethics requires advocates to make honorable and fair dealings with the client and the opponent. For example, advocates' fee must be fair and reasonable. Excessive fee discourages the laypersons from utilizing the legal system to protect their rights. It abuses advocate-client relationship which is based on mutual trust and confidence.

1.3 Moral Issues and Moral Dilemmas.

Issues are questions or problems to be answered or solved. Moral issues are issues that raise questions of value about rights and welfare of a person. They may be about the character of a person (Callahan 6). Questions of value are best understood when they are compared with questions of fact. Answering questions of value involves important value judgment while answering questions of fact does not involve value judgment. Answering questions of value requires moral principles whereas answering question of fact requires evidence. Consider the following example:

Assume that there is a rumor about homosexuality of Mr. X whom you know very well. You want to answer two questions related with Mr. X. These questions are.

- a) Is the rumor about Mr. X's homosexuality true (i.e. is Mr. X homosexual)?
- b) Is there anything wrong if Mr. X is homosexual?

To answer the first question you need evidence which may be an eye witness, video tape or other direct or circumstantial evidences. Thus, the first question is a question of fact. However, the second question cannot be answered by references to the evidences obtained under the first

question. You judge the behavior of homosexuality. You have to resort to the value of the society or the moral principles. Thus, the second question involves value judgment.

The distinction between question of value and question of fact is similar to the distinction between question of law and question of fact. As you have discussed under procedural laws and the law of evidence. The only difference is that the question of value is ascertained by reference to a morality and the question of law is ascertained by reference to law. Therefore, the difference between question of law and question of value boils down to the difference between law and morality.

Moral issues involve value dilemmas (moral dilemmas) as depicted below by (Callahan 9)

“Moral dilemmas involve situations in which one cannot escape deciding in which not to decide is to decide and in which doing nothing has the moral status of doing something. ... [G]enuine moral dilemmas always involve sacrificing something of significant moral value since they involve conflicts of values we want to preserve or minimally values we think are worth respect—values like loyalty to a colleague, client’s right to privacy and confidentiality, a clients welfare, the public good veracity, personal integrity, legitimate self interest”
(Ibid).

To illustrate let us see the conflict between two values: confidentiality of information and liberty of individuals. Art. 10 of Federal Courts advocates Code of Conduct Council of Ministers Regulation No. 57/1999 makes the information between client and advocate confidential to protect right to privacy under Art.26 of FDRE Constitution. If the advocate reveals this information, no client will consult an advocate resulting in no meaningful representation. Therefore, we value confidentiality of client’s information. On the other hand, we value justice and liberty. It is not just to imprison innocent persons. Art. 17 of the constitution guarantee the right to liberty. The following example, which is adopted from Callahan, show how these two values conflict.

Imagine that you are a criminal lawyer defending a client who is on trial for aggravated homicide contrary to Art 539 of the Criminal Code. You are quite certain that she is innocent of the crime. The trial is going in her favour and the probability of acquittal is very high. You have established a good relationship with her and (bolstered by prospect of acquittal) she tells you that although she did not commit this homicide she did commit another homicide four years earlier. She goes on telling you that another woman with long criminal record was convicted of that homicide and is serving life imprisonment for it. You attempt to persuade her to confess to crime but she adamantly refuses. What would be your decision?

In this example you cannot escape from deciding your choice not to decide amounts to decision. Your decision involves the sacrifice of one value. Thus you have two choices. One is to act upon the information of your client by rebating confidential information and obtain the release of the innocent convict. If it is possible this totally disregards or sacrifices the other value. Confidentiality of client's information your other choice is to remain silent. In doing so you sacrifice the other value-liberty of individuals.

1.4. The Theory of Moral Obligation

What is the importance of studying theory of moral obligation for legal profession and Ethics? The rules of legal ethics, like other law need to be interpreted when they are silent, ambiguous or repugnant to the common sense. The study of theory of moral obligation equip the students of Legal Profession and Ethics with some tools which they can use when they discover that there is "no rule on the point" or that the rule on the point is open textured" or that the rules on the point permits or requires conducts that seems morally repugnant (Mortimer D. Schwartz 5).

There are many theories of moral obligations. For our purpose we limit ourselves to Utilitarianism, Categorical Imperatives and Golden Rule.

1.4.1 Utilitarianism

According to English philosophers and economists Jeremy Bentham and John Stuart Mill, an action is right if it tends to promote happiness and wrong if it tends to produce the reverse of happiness—not just the happiness of the performer of the action but also that of everyone affected by it (Encyclopedia Britannica). Utilitarianism's theory of what is *right* is consequentialism, or the doctrine that the morally right option in any circumstance is that option which brings about the most good, or the best *consequences*. Any other option is wrong. An option which produces the most good also produces the least bad consequences. Hence, there can be a right alternative even if the only alternatives produce bad consequences. For example, all dentists cause pain but the degree of pain differs. Thus, the right dentist to go to is the one who produces the least pain.

According to Utilitarians, what is good is *utility*. Utility is human well-being or welfare. Utility, according to Jeremy Bentham, is 'that property in any object, whereby it tends to produce benefit, advantage, pleasure, good, or happiness...or...to prevent the happening of mischief, pain, evil, or unhappiness' (*Introduction to the Principles of Morals and Legislation* (1789)).

There are different kinds of utilitarianism. For our purpose, we focus on the following two: Act utilitarianism and Rule utilitarianism.

A. Act Utilitarianism

An act Utilitarianism holds that *an action is right if and only if it produces the best consequences*. Act Utilitarianism tells us that what determine whether a given *action* is right are *that action's* consequences. It tells us that the one and only right action to perform in any given situation is that action which produces the best consequences of all those actions that are available to the agent at a given time and place. Any action that produces less than the best consequences is therefore wrong. Hence, lying is wrong in a given situation if and only if telling the truth or remaining quiet produces better consequences. By the same token, lying is right in a

given situation if and only if lying produces better overall consequences than either telling the truth or remaining quiet.

According to act utilitarianism, an action cannot be judged right or wrong abstractly. It depends upon the situation in which an act is performed. Thus, stealing, murdering, telling lie etc may be right or wrong depending on the situation in which they are performed. That is, stealing is right if it produces the best consequences. For example, X steals certain food items from B, who is the richest person in the village, the lives of his family members. Stealing in this case is right.

James Rachels summarizes act utilitarianism in the following terms:

First, actions are to be judged right or wrong solely in virtue of their consequences. Nothing else matters. Right actions are, simply, those that have the best consequences.

Second, in assessing consequences, the only thing that matters is amount of happiness or unhappiness that is caused. Every thing else is irrelevant. Thus, right actions are those that produce the greatest balance of happiness over unhappiness.

Third, in calculating the happiness over unhappiness that will be caused, no one's happiness is to be counted as more important than anyone else's. Each person's welfare is equally important (Schwartz 10).

One difficulty with act Utilitarianism is that it seems quite possible for it to conflict dramatically with our conscience and many of our deeply held convictions like justice and rights. For instance, we believe that in most cases torture is wrong even if it produces the best consequences. Read the following illustration taken from Schwartz.

York V. Story (U.S court of Appeals, Ninth Circuit)

In October, 1958, appellant (Ms. York) went to the police department of Chino for the purpose of filing charges in connection with an assault upon her. Appellee Ron Story, an officer of that police department, then acting under color of his authority as such, advised appellant that it was necessary to take photographs of

her. Story then took appellant to a room in the police station, locked the door, and directed her to undress, which she did. Story then directed appellant to assume various indecent positions, and photographed her in those position. These photographs were not made in any lawful purpose.

Later that month, Story advised appellant that the pictures did not come out and that he had destroyed them. Instead, Story circulated these photographs among the personnel of the chino police department.

Ms. York brought suit against these officers and won. Her legal rights had clearly been violated. But, what about the morality of the officers' behavior? Utilitarianism says that actions are defensible if they produce a favorable balance of happiness over unhappiness. This suggests that we consider the amount of unhappiness caused to Ms. York and compare it with the amount of pleasure taken in the photograph by Officer Story and his cohorts. It is at least possible that more happiness than unhappiness was caused. In that case the utilitarian conclusion apparently would be that their actions were morally all right. But this seems to be perverse way to approach the case. Why should the pleasure afforded Story and his cohorts matter at all? Why should it even count? They had no right to treat Ms. York in that way, and the fact that they enjoyed doing so hardly seems a relevant defense.

The moral to be drawn is that Utilitarianism is at odds with the idea that people have rights that may not be trampled on merely because one anticipates good result. Ms. York's right to privacy was violated; (and in other cases other rights may be at issue) — the right to freedom of religion, to free speech, or even the right to life itself. It may happen that good purposes are served, from time to time, by ignoring these rights. But we do not think that our rights should set aside so easily. The notion of a personal right is not utilitarian notion. Quite the reverse: it is a notion that places limits on how an individual may be treated, regardless of the good purposes that might be accomplished (Ibid. p. 13).

In general, it seems quite possible that our deeply held beliefs about what we ought or ought not to do could conflict with what the act utilitarianism standard tells us to do. In response to this problem, many utilitarians have opted for rule Utilitarianism instead.

B. Rule Utilitarianism

According to rule Utilitarianism, an action is right if and only if it is in accordance with a set of rules conformity which produces the best consequences. A rule Utilitarianism does *not* depend on its consequences. Rather, it depends on whether the action is in accordance with a set of rules of conduct. Which set of rules? Set of rules conformity which have the best overall consequences. For example, suppose the following rules are members of the set of those rules conformity which produces the best consequences:

1. Everyone shall tell the truth
2. No one shall steal the property of another
3. No one shall torture other person
4. Everyone shall help others who are in need and
5. Everyone is entitled to develop his/her talents

Suppose further that in a particular case, lying would have the best consequences overall of all alternative actions that I could perform. Based on the view of act utilitarianism lying would in this case be the right thing for me to do. But on the rule of Utilitarianism view, it would be the wrong thing for me to do. It would be wrong because it is not in accordance with the set of rules conformity which produces the best consequences.

Rule Utilitarianism does not, however, specify whose conformity is at issue. Is it the agent's (doer's) conformity that matters for determining the set of rules that produce the best consequence? Or is it everyone's or general_conformity? Most commonly it is taken to be the latter. Hence, an action is right if and only if it is in accordance with a set of rules general conformity which produces the best consequences.

Rule Utilitarianism, in this sense, implies that an action is wrong if it is in accordance with a rule which, if everyone followed it, would have bad consequences. Consider this example (from D. Lyons, *Forms and Limits of Utilitarianism*). Suppose you and your friend are walking beside an orchard. Your friend says "Let's pick a couple of apples". You well object, "No, Which would be wrong, because it would be stealing". However, your friend responds, "Two too fewer apples out of this huge orchard won't harm the owner, and we will get great pleasure out of them." The intuition behind Rule Utilitarianism is that violating the rule "Don't steal" is wrong, not because in this case stealing will produce bad consequences. Nor is it wrong because your violation of this rule will produce bad consequences. Rather, "What if everyone did that?" That is, if everyone were to follow the rule "pick apples for yourself in these circumstances", then, the orchard owners income would be broken broke. Hence, it is wrong for us to steal apples in this case because if everyone were to follow this as a rule in such a case, it would have bad consequences.

1.4.2 The Golden Rule

The golden rule is also called ethic of reciprocity. The Parliament of the World's religions, an international organization that facilitates dialogue among all religions, calls the golden rule a "global ethic" (Mortimer D. Schwartz 18). There are expressions of the golden rule in great religions of the world.

Let us consider an example of how the rule is used. U.S President, J.F. Kennedy in 1963 appealed to the golden rule in an anti-segregation speech at the time of the first black enrollment at the University of Alabama. He asked whites to consider what it would be like to be treated as second-class citizens because of skin color. Whites were to imagine themselves being black - and being told that they could not vote, or go to the best public schools, or eat at most public restaurants, or sit in the front of the bus. Would whites be content to be treated that way? He was sure that they would not - and yet this is how they treated others. He said the "heart of the question is ... whether we are going to treat our fellow Americans as we want to be treated."

The golden rule is best interpreted as saying: "Treat others only in ways that you're willing to be treated in the same exact situation." To apply it, you would imagine yourself in the exact place of the other person on the receiving end of the action. If you act in a given way toward another, and yet are unwilling to be treated that way in the same circumstances, then you violate the rule.

To apply the golden rule adequately, we need knowledge and imagination. We need to *know* what effect our actions have on the lives of others. And we need to be able to *imagine* ourselves, vividly and accurately, in the other person's place on the receiving end of the action. With knowledge, imagination, and the golden rule, we can progress far in our moral thinking.

The golden rule is best seen as a consistency principle. It doesn't replace regular moral norms. It isn't an infallible guide on which actions are right or wrong; it doesn't give all the answers. It only prescribes consistency - that we should not have our actions (toward another) out of harmony with our desires (toward a reversed situation action). It tests our moral coherence. If we violate the golden rule, then we're violating the spirit of fairness and concern that lies at the heart of morality.

The golden rule, with roots in a wide range of world cultures, is well suited to be a standard to which different cultures could appeal in resolving conflicts. As the world becomes more and more a single interacting global community, the need for such a common standard is becoming more urgent

1.4.3 Categorical Imperative

According to Immanuel Kant (1724-1804), the great German Idealist philosopher of the 19th century, imperative is any proposition that declares a certain action (or inaction) to be necessary. There are two kinds of imperatives. They are hypothetical and categorical imperatives.

Hypothetical Imperative is a rule of action for achieving certain ends. It guides an action in an instrumental way. Hypothetical imperatives tell persons the best way to achieve their goals. For example, if you want to score 'A' in Legal Profession and Ethics you must study hard. Your end

is scoring 'A' and the way to achieve this end is 'studying hard.' Hypothetical imperative is conditional. It depends on the existence of certain end.

Categorical Imperatives are unconditional commands that are binding on everyone at all times. Categorical imperatives command the performance of an action that is intrinsically right. Categorical imperatives are unconditional and independent of any things, circumstances, goals, or desires. Although he held that there is only one categorical imperative of morality, Kant found it helpful to express it in several ways. Kant provides the following three formulations of categorical imperatives:

1. Act only according to that maxim by which it can at the same time will become a universal law.
2. Act in such a way that you always treat humanity, whether in your own person or in the person of any other, never simply as a means, but always at the same time as an end.
3. Act as though you were, through your maxims, a law making member of a kingdom of ends.

According to the first formulation, we have a perfect duty not to act by maxims that result in logical contradiction when we attempt to universalize them. Maxims are rules for action that guide us in making decision. Every action has an underlying maxim. For example, to determine the moral worth of "stealing," we must determine the maxim underlying it. Thus, we ask "what is the maxim on which the action is based?" The underlying maxim is that "it is permissible to steal." Then we ask "when universalized, is the maxim logically consistent? Can it still occur (is it still possible) when universalized, or is it self-defeating? [If everyone did this, would it still be possible?]" Stealing presupposes the existence of private property. If there is no private property there is no stealing. If we universalize the maxim that it is permissible to steal, then no private property exists. As a result, there is nothing to be stolen. For this reason, universalizing the maxim that it is permissible to steal is self-contradictory. In other words, this maxim cannot be universalized. If the maxim cannot be universalized, we have a perfect duty not to follow it. Therefore, we have a perfect duty not to steal.

Our inquiries do not end if the maxim can be universalized. In such case we ask the following questions. Does willing the maxim as a universal law lead the will to contradict itself? Can it be willed whatever position one is in? Can one reverse positions (change places) and still will it? Let us determine the moral worth of “helping the poor.” The maxim here would be that it is permissible never to help those who are poor. This maxim can be universalized as it is not self-contradictory. However, no one could consistently will that it become the universal law, since even the richest among us rightly allow for the possibility that we may at some future time find ourselves in need of the help of others. If a maxim can be universalized, but not willed without contradiction, then one has an imperfect duty not to follow it. For example, a prosperous person has an imperfect duty to help those in distress.

The second formulation simply states that we should never use people for our own benefit, thinking nothing of them as people. Instead, we should see the benefit of others as our end goal, rather than merely a means. Do not exchange human being with a thing, say a car. Nothing is of equal worth with human beings. Humans beings are priceless. Thus, if we use people for our own benefit, that is not moral. In short, we should avoid *using others as a mere means* and we should *treat others as ends in themselves*. Read the following passage taken from (Mortimer D. Schwartz) on these two concepts.

A. Using Others as a Mere Means

We use others as mere means if what we do reflects some maxim to which they could not in principle consent. Kant does not suggest that there is anything wrong about using someone as a means. Evidently every cooperative scheme of action does this. A government that agrees to provide free or subsidized food to famine relief agencies both uses and is used by the agencies; a peasant who sells food in a local market both uses and is used by those who buy it. In such examples each party to the transaction can and does consent to take part in that transaction. Kant would say that the parties to such transactions uses one another but do not use one another as mere means. Each part assumes that the other has its own maxims of action and is not just a thing or prop to be used or manipulated.

But, there are other cases where one party to an arrangement or transaction not only uses the other but does so in ways that could only be done on the basis of a fundamental principle or maxim to which the other could not in principle consent. If a false promise is given, the party that accepts the promise is not just used but used as a mere means, because it is impossible for consent to be given to the fundamental principle or project of deception that must guide every false promise, whatever its surface character. Those who accept false promises must be kept ignorant of the underlying principle or maxim on which the “undertaking” is based. If this is not kept concealed, the attempted false promising the deceived party becomes, as it were a prop or tool—mere means—in the false promisor’s scheme. Action based on any such maxim of deception would be wrong in Kantian terms. Whether it is a matter of breach of treaty obligations, or contractual undertakings, or of accepted and relied upon modes of interaction. Maxims of deception standardly use others as mere means, and acts that could only be based on such maxims are unjust.

Another standard way of using others as mere means is by coercing them. Coercers like deceivers, standardly do not give others the possibility of dissenting from what they propose to do. In deception, “consent” is spurious because it is given to a principle that could not be the underlying principle of that act at all; but the principle governing coercion may be brutally plain. Here any ‘consent’ given is spurious because there was no option but to consent. If a rich or powerful landowner or nation threatens a poorer or more vulnerable person, group or nation with some intolerable difficulty unless a concession is made, the more vulnerable party is denied a genuine choice between consent and dissent. While the boundary that divides coercion from mere bargaining and negotiation varies and is therefore often hard to discern, we have no doubt about the clearer cases. Maxims of coercion may threaten physical force, seizure of possessions, destruction opportunities, or any other harm that the coerced party is thought to be unable to absorb without grave injury or danger. A moneylender in a Third World Village who threatens not to make or renew an indispensable loan, without which survival until the next harvest would be impossible, uses the peasant as mere means. The peasant does not have the possibility of genuinely consenting to the “offer he can’t refuse.” The outward form of some coercive transactions may look like ordinary commercial dealings: but we know very well that some action that is superficially of this sort is based on maxims of coercion. To avoid coercion, action

must be governed by maxims that the other party can choose to refuse and is not bound to be accepted. The more vulnerable the other party in any transaction or negotiation, the less their scope for refusal, and the more demanding it is likely to be to ensure that action is non-coercive.

In Kant's view, acts done on maxims that coerce or deceive others, cannot in principle have the consent of those others, are wrong. When individuals or institutions, or nation states act in ways that can only be based on such maxims they fail in their duty. They treat the parties who are either deceived or coerced unjustly. To avoid unjust action it is not enough to observe the outward forms of free agreement and cooperation; it is also essential to see that the weaker party to any arrangement has a genuine option to refuse the fundamental character of the proposal.

B. Treating Others as Ends in Themselves

For Kant, as for utilitarians, justice is only one part of duty. We may fail in our duty, even when we do not use anyone as mere means (by deception or coercion), if we fail to treat others as "ends in themselves." To treat others as "Ends in Themselves" we must not only avoid using them as mere means but also treat them as rational and autonomous beings with their own maxims. If human beings were wholly rational and autonomous then, on a Kantian view, duty would require only that they should not use one another as a mere means. But, as Kant repeatedly stressed, but later Kantians have often forgotten, human beings are finite rational beings. They are finite in several ways.

First, Human beings are not ideal rational calculators. We standardly have neither a complete list of the actions possible in a given situation nor more than a partial view of their likely consequences. In addition, abilities to assess and use available information are usually quite limited.

Second, these cognitive limitations are standardly complemented by limited autonomy. Human action is limited not only by various sorts of physical barrier and inability but by further sorts of (mutual or asymmetrical) dependence. To treat one another as ends in themselves such, beings have to base their action on principles that do not undermine but rather sustain and extend one

another's capacities for autonomous action. A central requirement for doing so is to share and support one another's ends and activities, at least to some extent. Since finite rational beings cannot generally achieve their aims without some help and support from others, a general refusal of help and support amounts to failure to treat others as rational and autonomous being, that is as ends in themselves. Hence, Kantian principles require us not only to act justly, that is in accordance with maxims that do not coerce or deceive others, but also to avoid manipulation and to lend some support to other's plans and activities.

Summary

The necessary characteristics of a profession are extensive training, intellectual component in the training and community services. Among the multitude of profession one is legal profession. The rules that regulate the conducts of members of legal profession are called *legal ethics*. It is a sub-branch of philosophy. Moral issues are questions of value and moral dilemmas are situations in which one cannot avoid deciding when two or more values conflict. The moral issues and dilemmas that arise in professional life can be solved by reference to the rules of legal ethics or other professional ethics and in their absence with reference to theories of moral obligations in moral philosophy such as utilitarianism, golden rule and categorical imperative.

These theories try to distinguish the rights from the wrongs. According to utilitarianism a right action is an action that produces the best consequences. The amount of happiness is important to determine the best consequence of an action. The right action from the perspectives of the golden rules is actions in which the doer of those actions want the same action to be done to him/her. The rule is "do not do to others what you do not want to be done to you." This rule has found expression in African tradition, and great religion of the world like Islam, Christianity, Buddhism, Hinduism and others. According to Immanuel Kant's theory of categorical imperative, right action is an action that is intrinsically good irrespective of their consequences. According to one of the formulations of Kant's formula of Categorical Imperative, one should not treat others as a mere means and as the same time should treat others as an ends in themselves.

Review Questions

Part I: Multiple Choices

Choose the best answer.

1. In USA, the first initiative to regulate the professional conduct of judges was taken by_____.
 - A. The government
 - B. The Judiciary
 - C. The Congress
 - D. Association of Lawyers

2. In Ethiopian history of professional regulation practice of lawyers, the first Advocates' of Code of Conduct was enacted during the:
 - A. Imperial Regime
 - B. Dergue Regime
 - C. Transitional Period
 - D. EPRDF Regime

3. Which one of the following is not true?
 - A. Profession is an occupation
 - B. Ethics is a source of professional ethics
 - C. Legal ethics is a branch of applied ethics
 - D. Professional ethics applies to all persons

4. _____ has no place for individual right or justice.
 - A. Act-utilitarianism
 - B. Rule-utilitarianism
 - C. Categorical imperatives
 - D. Golden Rule

5. Which one of the following is not true about Categorical Imperative?
- A. Categorical Imperative is formulated by Immanuel Kant
 - B. Categorical Imperative prohibits using others as a mere means
 - C. Categorical Imperative requires persons to treat others as ends in themselves
 - D. Categorical Imperative judges action based on its consequences

Part II: Problems

Solve the following problems

1. Bekele lent Abebe 200,000 Birr in January 1993. In the same year he fled to Malta, an island in Mediterranean Sea, for the fear of political persecution. He returned home in January 2007. During his stay abroad, Bekele did not have a means to recover his money from Abebe. As soon as he arrived, he requested Abebe the payment of the loan. But, Abebe declined to discharge the debt. Thus, Bekele decided to sue Abebe in the court of law.

Bekele hired Dereje as an advocate to litigate on his behalf. Dereje has good reputation in the legal profession. He explained to Bekele that there is no possibility of winning the case as it is barred by period of limitation. He advised his client to settle the matter amicably. But, Bekele insisted on the institution of the case. As a result, Bekele and Dereje agreed that Bekele would pay 42 per cent of the net recovery as a fee. To carry out his obligation Dereje filled a statement of claim in the Federal First Instance Court and caused the same to be served on Abebe together with a summon.

After the institution of a case, Dereje found himself in financial hardship. His small business went bankrupt. He has no engagements with any other client except Bekele. His advocacy service is not earning him fees. Dereje decided to borrow certain money from Bekele. Bekele lent Dereje 30,000 Birr.

Abebe decided to appear in court through an advocate. Thus, he hired Cherinet to represent him in a defense against Bekele. Abebe agreed to pay a total of 2000 birr for handling the case.

Dereje decided to deal with Cherinet as he came to know that Abebe appointed Cherinet as his advocate. Dereje offered Cherinet 40,000 Birr if Cherinet would not raise period of limitation as a defense on preliminary objection. Cherinet found that the consideration for the deal was really attractive and he decided not to raise period of limitation as grounds of defense as the loss of his client in this case is not unfair since the money originally belongs to the plaintiff. Due to Cherinet's failure to raise period of limitation as a ground of defense, Bekele won the case.

Assume that there are no rules of conduct that regulate the matter in the above hypothetical case.

- a) Are the conducts of Dereje and Cherinet right from the perspective of Act-Utilitarianism?
How?
 - b) Are the conducts of Dereje and Cherinet right from the perspective of Categorical Imperative? How?
 - c) Are the conducts of Dereje and Cherinet right from the perspective of Golden Rule?
How?
2. Imagine the following scenario. A prominent and much-loved leader has been rushed to the hospital, grievously wounded by an assassin's bullet. He needs an immediate heart and lung transplant to survive. No suitable donors are available, but there is a homeless person in the emergency room that is being kept alive on a respirator, who probably has only a few days to live, and who is a perfect donor. Without the transplant, the leader will die; the homeless person will die in a few days anyway. Security at the hospital is very well controlled. The transplant team could hasten the death of the homeless person and carry out the transplant without the public ever knowing that they killed the homeless person for his organs.

What should they do? (what should the transplant team do?)

- a) If they were Act Utilitarians

- b) If they were Rule Utilitarians
3. Assume that it is in a state governed by military dictator in which the government extensively uses torture to obtain information from detainees. The security department came to know that one person among a group of ten persons is engaged in military intelligence against the government. The government decided to arrest and torture all of the persons among which the suspect is found. The torture is so serious that it usually leads to death of some. A person from a security department asked an act-utilitarian if he knows any thing about the military intelligence. What kind of course of action do you think has takes?

Project Work 1.1

Bekele is suffering from incurable diseases which are highly painful. He hardly sleeps. He groans day and night from pain. Even pain killers cannot soothe his pain for a second. His relatives with support of the public could send Bekele abroad for treatment. But there is no hope of treatment. Thus a minute of Bekele's life become a pain for him and a trouble for his relatives. The only relief to Bekele and his relative is death of Bekele. Being aware of this Bekele decided to commit suicide but he could not commit suicide as he is totally paralyzed. Thus, Bekele begged his intimate friend Kebede to kill him. What would be your decision if you were Kebede?

- a) In group conduct a survey of not less than 50 persons regarding their decision and reason for their decision if they were placed in the shoe of Kebede.
- b) Can they avoid deciding? Why?
- c) Analyze the principles on which they make their decisions.
- d) What are the values that conflict in this case?

CHAPTER TWO

THE LEGAL PROFESSION

Introduction

In the previous chapter, we have dealt with the concept of ethics, professional ethics and legal ethics. We discussed the meaning and characteristics of profession. The understanding of these concepts is very important to understand Legal profession as profession of law is only one kind of profession.

As one category of profession, it is imperative to understand the membership in the profession, the regulation of the profession and the attitude of the society towards the profession. In this chapter, we will begin the discussion with the meaning and nature of Legal profession, admission to legal profession, bar associations, constitutional right to practice legal profession, dissatisfaction with legal profession, and unauthorized practice of law.

For successful completion of this chapter, the students are required to answer the questions provided, solve the problems and conduct the project work. The use of the materials referred to in this chapter is highly recommended.

Objectives

By the end of this chapter, students will be able to:

- Distinguish legal profession from other professions
- List requirements for admission to the legal profession
- Analyze Constitutional right to choose and exercise legal profession
- Explain the attitudes of the members of the society towards legal profession
- Discuss the role of bar associations in the legal profession
- Explain the meaning and effects of unauthorized practice of law

2.1 Meaning and Nature of Legal Profession

Raj kishore Prasad, an Indian justice, described the profession of law as follows.

“The profession of law is a great culling, and to discharge the responsibility the member of this profession must make himself equal to the task law is a great profession of talent and talent is bound to make headway through many vicissitudes of circumstances and through many reversals of fortune. The profession calls for great knowledge high mental capacity and wide culture”
(Myneni 50).

Myneni emphasizes the duty of lawyers and give us the impression that lawyers are members of the legal profession. From his writing, it could be concluded that the legal profession does not include all persons trained in law such as judges, prosecutors, and others. Legal profession is the collective name given to lawyers. The Legal profession is also understood to include judges, prosecutors, legal educators and others. For example, one author described the legal profession by referring “the whole occupational roles purposely oriented towards the administration and maintenance of the legal system” (Deflen). Legal profession encompasses lawyers, judges, counselors, as well as experts of legal education and scholarship (Ibid).

Profession of law is essential in a complex society. It is essential to move the machine of civilization, according to justice McCarty, the alternative to the reign of law is the chaos of the jungle. Legal profession unlike other profession, which are generally taken up with the sole objective of earning money is a profession of high dignity. Legal profession is a profession, not a business. The distinction between legal profession and business is deep and fundamental (Ibid).

Legal profession is an occupation that requires advanced training in law. Business is the activity of making buying, selling or supplying goods or services for money (Hornby 160). Business does not require training. Thus, legal professionals can be a businessperson while business persons cannot practice law.

Legal profession is related to administration of justice. The motive in legal profession is safeguarding liberty and attaining justice. Fees to the advocate or other legal professionals are incidental upon safeguarding liberty and attaining justice. Fees are only honorarium payment. Fees do not depend on winning of the case. Thus, there is no loss whether the advocates win or not. In business, however, loss is an important concept as its main motive is to obtain profit. When ever the total revenue is less than the total cost a business person sustains loss. Loss drives business person out of the market.

Legal professionals work for the welfare of the society; they protect order, justice and liberty. However, all businesses do not benefit the society. For example, sale of alcohol, drugs etc. are sources of many socio-economic problems in the society. Such businesses affect the health of the members of the society. As a result, all businesses are not good to the society while legal profession is always good to the society.

Competitions may be another distinction between legal profession and business. A lot of advertisement in the media shows the toughest competition in the business. On the other hand, strictly speaking, there are no competitions in the legal profession because the goal of all legal professionals is one and the same: liberty and justice. Thus, legal profession is characterized by cooperation between the professionals. All legal professionals have common enemy — injustice and violation of liberty. This cooperation should also exist between the bench and the bar. An advocate and a public prosecutor should help the judge to render a correct decision.

2.2 Admission to the Legal Profession

The admission to the legal profession differs in various jurisdictions. The following are experiences in some countries.

a) Canada

A person should pass through three distinct stage of legal education to be admitted to the bar in Canada. The stages are pre-law university instruction, the academic stage and vocational stage.

The first stage consists of at least two and usually four years of university study in an undergraduate degree program. The second stage consists of a three year degree program in law. The last stage consists of a period in articles with an experienced legal practitioner, a bar admission course of varying duration, and a qualification or bar examination. Thus, legal education is typically a seven to eight year program prior to admission to practice in Canada (Law).

A period in articles with an experienced legal practitioner, also known as articling or articles of clerkship, is a form of apprenticeship with a legal practitioner for usually twelve months. In addition to the training in articles, students must also take a bar admission course, of varying sophistication and duration, usually during and/or after articles. Either during the articling period or at the end of articles, students must successfully pass a qualification examination, commonly known as the Bar Admission Examination. In articling, law students make their own arrangements with law firms or legal practitioners for articles. This is undertaken like a job search with written applications and one or more interviews (ibid).

The primary objective of articling is to prepare the university law graduate to practice law competently. More specifically, it is to train the law graduate to apply, in a practice setting, the procedural and substantive law that he or she has learned in law school; develop and acquire new practice skills in the context of actual practice situations; and cultivate a sense of "professionalism" through exposure to the values, attitudes, beliefs, and traditions of the legal profession (ibid).

b) South Africa

In South Africa, a person should pass through four stages of education and qualification and pass bar examination to become an attorney. The first stage is university education for four years leading to an L.L.B. degree. The second stage is attendance at a practical legal training school. The third stage is service of articles of clerkship under a practicing attorney; and the final stage is employment in a public interest law firm (Mhlungu).

All law school graduates are required to supplement their L.L.B. degree with compulsory attendance at a five-week practical course at practical legal training schools. A law graduate who is able to attend an additional five-month practical legal training schools course need only serve one year of articles, instead of two. The objective of these courses is to supplement the training provided by law firms regarding the knowledge, skills, and attitudes required of a competent candidate attorney. Emphasis is also placed on preparing for the Admissions Examination (ibid).

Every law graduate must enter into a contract of clerkship with a principal, that is, a senior attorney who has practiced for more than three years. A graduate can fulfill his or her articles of clerkship requirement at a private firm, law clinic, justice center, or public interest law firm. In the contract, the candidate attorney undertakes to diligently, honestly, properly, and confidentially serve the principal and the profession. In return, the principal undertakes to use his best efforts to ensure that the candidate attorney is properly instructed in the practice, ethics, and understanding of the profession.

The purpose of employment in a public interest law firm is to allow candidate attorneys to obtain practical experience by undertaking community service positions at law clinics accredited by provincial law societies. These include public interest law firms such as the Legal Resources Centre, university-based law clinics, and justice centers run by the Legal Aid Board. As in law firms, the clinics are required to employ a principal attorney with a minimum of three years practical experience to supervise law graduates in the community service program. The candidate attorneys appear in the district courts, while the principals appear in the regional and the High courts. In public interest law firm, an attorney supervises candidate attorney and group of law students enrolled in the firm (ibid).

In addition to serving a clerkship after graduation from law school, a candidate applying to practice law must have passed a four-pronged examination that includes estates, ethics, bookkeeping, and court procedure. Graduates may take these examinations at different times, either before or during the clerkship. The examinations aim at determining whether a law graduate has the necessary professional competence to practice law (ibid).

c) U.S.

In the United States, admission to the bar and lawyer discipline has traditionally been the matters of state concern. Lawyers are not admitted to practice in the United States, they are admitted to practice in a particular state or states. Separate rules govern admission to the various federal courts. In most states, admission to practice law is gained by graduating from law school, passing the state's bar examination, and demonstrating that you possess good moral character (Mortimer D. Schwartz 30-31).

An attorney who wants to practice in federal courts must be separately admitted to the bar of that court, because each federal court maintains its own separate bar. Typically, admission is granted upon motion by an attorney who is already a member of that court's bar and; who can affirm that the applicant is a person of good moral character. Admission to a federal district court typically requires the applicant to be admitted in the state in which the federal court sits. Admission to federal court of appeal requires the applicant to be admitted in the courts of any state. Admission to the United States Supreme Court requires the applicant have to practiced the law before the courts of a state for at least three years (Mortimer D. Schwartz 36).

d) Ethiopia

Admission to the legal profession in Ethiopia is similar with that of U.S. It is the jurisdiction of the state to determine the requirements to practice before state courts. To practice before federal courts, any Ethiopian should hold one of the three types of licenses issued by the Ministry of Justice (Article 3 and 7 of Federal Courts Advocates Licensing and Registration Proclamation No. 199/2000). They are:

- a) federal first instance court advocacy license;
- b) federal courts advocacy license; and
- c) federal court special advocacy license.

The followings are some common requirements to obtain these licenses.

- Graduation from legally recognized institution and experience

- suitable code of conduct for assisting in the proper administration of justice;
- pass mark in the advocacy entrance examination
- no conviction and sentence in an offense showing an improper conduct;
- documents evidencing entrance into a professional Indemnity Insurance Policy.

2.3 Constitutional Right to Exercise Legal Profession

Article 41(2) of the Constitution of FDRE provides that: “*Every Ethiopian has the right to choose his or her means of livelihood, occupation and profession*”. Profession within the meaning of this article means any activities that form the basis of one’s life. It includes not only those profession identified by custom or by law, but also freely chosen activities that do not correspond to the legal or traditional conception of profession. It is the constitutional right of Ethiopian citizens to choose legal profession as their means of livelihood.

Article 41(2) of the constitution does not attach any restriction or provide any exception to this right.

- ✓ Is the right to choose legal profession absolute right as the Constitution does not provide any restriction or exception?
- ✓ Can any organ of government limit this right?

As there is no restriction, the minimum requirement to enjoy the right to choose legal profession is being an Ethiopian. Any Ethiopian can choose legal profession. On the other hand, Proclamation No. 199/2000 makes clear that it is not all Ethiopian but only certain Ethiopians who studied law and can pass entrance examination who are legible to practice law.

Did the House of Peoples’ Representative restrict the right that is not restricted by the Constitution?

The Basic Law of Germany provides under sentence 2 of Article 12(1) that “*the practice of trades, occupation, and professions may be regulated by or pursuant to a law.*” This provision grants German legislature the power to make regulations affecting either the choice or the practice of a profession (Norman Dorsen 1205). It is submitted that the German legislature cannot regulate choice and practice of profession to the same degree (ibid). The regulatory power of the government is more limited to regulating the choice of profession than regulating the practice of a profession (ibid).

2.4 Dissatisfaction with Legal Profession

Dissatisfaction with the administration of justice in general and the legal profession in particular, is not new. It is as old as the law itself (Re 86). Thus, an occasional complaint is not a problem. The problem lies with persistent dissatisfaction with the legal profession.

One of the causes of popular dissatisfaction with the legal profession is the abuse of adversary system (Re 91). This abuse lead to bullying of witnesses and sensational cross examinations, thus creating a general dislike and impairment of the administration of justice. On top of that incivility among advocates exacerbated the dislike of the public to the legal profession. Advocates usually do not address each other courteously. They address one another in words short of insult. They forget or neglect their ethical duty to respect their colleagues.

Law schools contributed to the problem of abusing adversary system. They conditioned their students to look for a debatable issue. They do not train or teach their students to search for a just and equitable solution to legal problems or a common ground between contending parties. Accordingly, the concentration on the adversary system accentuates or exaggerates differences that might have been accommodated or resolved by negotiation or conciliation. The result is often bitter and prolonged litigation (Re 93).

Commercialization and problematic billing practices are other causes of dissatisfaction with the legal profession. Advocates turned legal profession into business. They tilted toward the commercial, rather than the service component of the profession (Re 95-96). The main reason of

the search for cases and the initiation of litigation became advocates' fee. The establishment of large law firms led to the belief that these firms accept the cases devoid of merit will be for a price or fee.

The problematic billing practices that led to discourage a public opinion about the legal profession include charges to more than one client for the same work or the same hours, surcharges on services contracted with outside vendors, and charges beyond reasonable costs for in-house services like photocopying and computer searches. Moreover, the bases on which these charges are to be assessed often are not disclosed in advance or are disguised on cryptic invoices so that the client does not fully and exactly understand what costs are being charged to him (Mortimer D. Schwartz).

- ✓ Are there other factors that caused dissatisfaction with legal profession?
- ✓ What solutions do you propose to alleviate persistent dissatisfaction with the legal profession?

2.4 Bar Associations and their role in Legal Profession

Bar associations plays important role in the legal profession. In some jurisdiction like the U.S. the bar is very strong. It carries out several activities respecting the profession. In other jurisdictions like Ethiopia, the role of the bar is very minimal. The following passages show the roles of bar associations in U.S. and Ethiopia.

a) American Bar Association

American Bar Association (ABA) was founded in 1878 to improve legal education, to set requirements to be satisfied to gain admission to the bar, and to facilitate the exchange of ideas and information among its members. Over the years, the ABA has been largely responsible for the further development of American jurisprudence, the establishment of formal education requirements for persons seeking to become attorneys, the formulation of ethical principles that

govern the practice of law, and the creation of the American Law Institute (ALI) and the Conference of Commissioners on Uniform State Laws, which advance the fair administration of justice by encouraging uniformity of statutes and judicial decisions whenever practicable. In recent years, the ABA has been prominently involved in the recommendation and selection of candidates for the federal judiciary, the accreditation of law schools, and the refinement of rules of legal and judicial ethics (Law Library -American Law and Legal Information: American ENcyclopedia, Volume 1).

b) Ethiopian Bar Association

The Ethiopian Bar Association (EBA) conducts three activities: Continuing Legal Education (CLE), Law Reform and Advocacy, and Legal Aid Services. Continuing Legal Education is intended to improve legal knowledge and skills of advocates, and to create awareness of new laws among its members through workshops. In its Law Reform and Advocacy activity, the EBA proposes amendments and new laws to contribute to the developments in law and in the administration of justice in Ethiopia, and creates awareness of law and human rights through research and publications. In this regard, it publishes bimonthly news letter and biannual journal. EBA provides legal aid services to indigent in association in cooperation with other associations.

The role of EBA is insignificant when compared with the role ABA plays. EBA participates in Advocate's Disciplinary Council, License Evaluating Committee and Advocacy Entrance Examination Setting and Competence Certifying Board (Article 20, 23 and 27 of Federal Courts Advocate's Licensing and Registration Proclamation No. 199/2000). The Ministry of Justice barred EBA from participating in these committees in 2006 on the ground that it is not representative of advocates (Ethiopian Bar Association). EBA returned to the committees in May 2006 after the executive committee of EBA reached a mutual understanding with Minister and State Minister of Ministry of Justice (ibid, Vol. 1. No.8, May 2006). Thus EBA does not control conducts of advocates independently.

2.6 Unauthorized Practice in Legal Profession

Unauthorized Practice is the performance of professional services such as the rendering of medical treatment or legal assistance by a person who is not licensed by the state to do so. Unauthorized practice of law is “the practice of law by a person, typically a non lawyer, who has not been licensed or admitted to practice law in a given jurisdiction” (Garner 956). An unauthorized practice of law is engaging in the practice of law by persons or entities not authorized to practice law pursuant to state law or use the designations “lawyer,” “attorney at law,” “counselor at law,” “law,” “law office,” “J.D.,” “Esq.,” or other equivalent words by any person or entity not authorized to practice, the use of which is reasonably likely to induce others to believe that the person or entity is authorized to be engaged in the practice of law in the state (Law Library -American Law and Legal Information: American ENcyclopedia, Volume 1).

Is unauthorized practice of law different from legal malpractice?

What is legal malpractice?

Unauthorized practice of law has not universal acceptance among the public. Some believe that there should be no laws that prohibit those who practice without license. Thus they oppose to laws that ban the unauthorized practice of law arguing that the legal profession uses these laws to maintain a monopoly over legal services, many of which can be performed by non-lawyers.

The legal professions have sought the enactment of laws that prohibit unauthorized practice of law in part to protect the public from persons who are not trained to give professional assistance and who may give sub standard treatment. The legal professions and most legislatures believe that the public interest is best served by restricting the performance of advocacy services to the members of their professions.

Federal Courts Advocate’s Licensing and Registration Proclamation No. 199/2000 does not use the term “unauthorized practice.” Still, it prohibits what other jurisdictions call unauthorized practice of law. Thus, unauthorized practice of law within the pure view of Proclamation

No.199/2000, is rendering advocacy service without having obtained a license or renewing thereof. Accordingly, it is only an advocate who can draft pleadings, contracts and other legal documents for others. There are certain exceptions to this rule. A person that has no advocacy license can render advocacy service for his relatives and others as provided under article 3(2) Proclamation No.199/2000.

What is the meaning of unauthorized practice of law in laws of National Regional States of Ethiopia?

In most of the Kebele Administration, applications to the Kebele are drafted by persons that have no advocacy license for consideration. Is this unauthorized practice of law?

Like other countries, unauthorized practice of law is a crime in Ethiopia. It is punishable with fine between 2,000 birr and 10,000 birr inclusive. Alternatively, it is punishable with imprisonment between six months to two years inclusive as per Article 31 of Proclamation No.199/2000. These penalties increase if the Criminal Code provides more severe penalties.

Does the Criminal Code Provide for more severe penalties? Refer the Criminal Code of 2005.

The existence of laws prohibiting the unauthorized practice of law does not guarantee that those laws will be enforced, an issue that is a concern to the legal profession. Enforcement is difficult both because proof of the unauthorized practice of law is difficult to obtain and because many prosecutors place a low priority on pursuing these violations.

Summary

Legal profession is a collection of advocates or all involved in the administration of justice. Legal profession is a noble profession and completely different from business. The aim of members of legal profession is attainment of justice and liberty not maximization of profit. Admission to this profession usually requires pass mark in bar examinations and good moral character. Every Ethiopian has the right to choose legal profession as a means of livelihood.

The members of the public are dissatisfied with legal profession because of, among others, abuses of adversary system, commercialization of the profession, and problematic billing practices. The profession and other stake holders should take measures to regain public trust and confidence in the legal profession.

Associations of advocates play key roles in regulating and developing the legal profession. The degree of involvement of these associations in the profession varies from one jurisdiction to another. In some jurisdictions like U.S., bars associations are very strong. Conversely, they are very weak in Ethiopia.

Unauthorized practice of law is rendering advocacy services without permission of the competent authority. It is a crime punishable with fine or imprisonment.

Review Questions

Part I: Multiple Choices

Choose the best answer.

1. The primary motive of an advocate in handling a case is
 - A. Attaining justice and liberty of individuals
 - B. Winning a case in a court of law
 - C. Obtaining as much fee as possible
 - D. Appealing the case in which his client loses

2. Admission to legal profession is handled by government in one of the following countries
 - A. USA
 - B. Canada
 - C. Ethiopia
 - D. South Africa

3. The main purpose of requiring license to practice law is
 - A. To create a source of revenue for government
 - B. To protect members of the public against sub-standard advocacy service
 - C. To enable few persons to monopolize the practice of law
 - D. To avoid competition in legal profession

4. Which one of the following is *not* a cause of popular dissatisfaction with legal profession
 - A. Excessive fees
 - B. Abuses of adversarial system
 - C. Civility among advocates
 - D. Commercialization of legal profession

5. Which one of the following is not true about practicing law?

- A. Practicing law without a license is a crime
- B. A person can represent his father in a court of law without having a license
- C. Graduation from law school is a pre condition to become an advocate
- D. Any Ethiopian can practice law

Part II: Short Answers

Answer the following questions briefly.

1. Why the Ministry of Justice administers Advocacy Entrance Examination while such function is carried out by associations of advocates in other countries?
2. Are the following persons liable for unauthorized practice of law under Proclamation No. 199/2000?
 - a) A person who renders advocacy service under a license obtained fraudulently.
 - b) A person who renders advocacy service while his/her license is suspended for violation of ethical duties of advocacy.
3. Admission in to the legal profession is easier in Ethiopia than in U.S., Canada, or South Africa. Comment.
4. Should Ethiopian Women Layers Association (EWLA) play any role in regulating legal professional conduct?
5. Can a person who fails to the requirements to fulfill be admitted to the profession claims violation of his/her constitutional right to choose profession?
6. Why foreign nationals are prohibited from practicing law in Ethiopia?
7. Legal profession is no more a noble profession. Comment.

8. How abuses of adversary system can be controlled? Who can control it? The court? The Ministry of Justice? Associations of Advocates?
9. Can Code of conduct of Advocates be instrumental in controlling the problematic billing practice in the legal profession? How?
10. What should be the roles of associations of advocates in respecting legal education in law schools of Ethiopia?
11. Could incompetence of advocates be a cause for dissatisfaction of the public towards the legal professions?
12. If there exist two or more associations of advocates in Ethiopia, from which associations members participate in different kinds of committee at the Ministry of Justice?

Project Work 2.1

Conduct a research on unauthorized practice of law in your vicinity and report in detail on:

- a) The prevalence of unauthorized practices
- b) The view of advocates, judges, prosecutors and other members of the society towards unauthorized practice of law
- c) The effect of unauthorized practice of law on the legal profession and the quality of services to the society

In conducting this research, you can make use of, among others, interviews, cases and literature.

Project Work 2.2

In a group conduct an interview with not less than fifty members of the public in your vicinity on:

- a) Their views on legal profession
- b) Their opinion toward advocates, advocates' fee
- c) Top three professions of their choices and how they rank law among their choices
- d) What profession they would choose for their children or relatives

Depending on this interview, measure the level of satisfaction of members of the society with legal profession as high, medium or low.

CHAPTER THREE

JUDICIAL CONDUCT

Introduction

In the previous unit, we have dealt with the concept of ethics, profession and theory of moral obligations. We discussed how an ordinary person whether he/she is a farmer, advocate, engineer, Member of Parliament, trader, prime minister, president or physician distinguish the right from the wrong based upon the theory of moral obligation such as utilitarianism, golden rule and categorical imperative. However, a certain conduct that is right for an ordinary person may not be right for a judge, advocate, public prosecutor or other professionals. Thus, we need set of rules of conduct that directs these professionals in their activities. One of such sets of rules is code of judicial conduct.

In this unit, we will mainly deal with code of judicial conduct. We will also cover such related issues as appointment, withdrawal and removal of judges, factors affecting judicial ethics, and liability for violating code of judicial conduct. Under the ethical requirement of judges in or out of court we will discuss issues such as ethical duty to be independent, duty to be impartial, duty to be competent and diligent, duty to treat all before the court as equal, promoting judicial independence without affecting judicial independence, civility among judges and social or business activities that incumbent judge should avoid.

The methods of judicial appointment, withdrawal and removal have a bearing on judicial independence. Judicial independence is *sin quo none* of democratic state. Impartiality cannot exist without judicial independence. Even an appearance of partiality can destroy public confidence in the courts. Institutional independence of judiciary is not complete without individual independence of each judge.

In embarking on the study of this unit, possession of Federal Code of Judicial Conduct in (of) Ethiopia, Federal Judicial Administration Council Establishment Proclamation, Federal courts Proclamation are mandatory. It is also advisable to have code of judicial conducts of national

regional states of Ethiopia, and other international instruments like Bangalore Principles of Judicial Conduct, other references listed at the end of this unit.

Unit Objectives

After successful completion of this unit, students will be able to

- Discuss ethical duty of judges in and out of court
- Explain the process of judicial appointment, withdrawal and removal.
- Identify factor that affect ethical duties of judges
- Analyze rules in the Code of Judicial Conduct to identify their violations
- Identify rationales behind rules of Code of Judicial Conduct
- Identify purposes that Code of Judicial Conduct serve
- Determine liability for judges who violate Code of Judicial Conduct
- Respect Code of Judicial Conduct

3.1. Ethical Duties of Judges in Judicial activities

3.1.1 Independence

As per the preamble to Ethiopian Federal Judges Code of Judicial Conduct (2001), independent judiciary is a pre-requisite for democratic and impartial administration of justice. It provides respect for code of judicial conduct maintains judicial independence. It imposes the duty to maintain judicial independence on the judiciary. Similar principles are found in international instruments like Bangalore Principles of Judicial Conduct, International Covenant on Civil and Political Rights and Universal Declaration of Human Rights.

According to *Value 1* of Bangalore principles of judicial conduct, judicial independence has individual and institutional aspects. The individual aspect of judicial independence is called personal or decisional independence. It refers to state of mind of judges (United Nations Office on Drugs and Crime 39). It is concerned with the judge's independence in fact (Ibid). Security

of tenure and financial security guarantee decisional independence (41 San Diego L. Rev. 997). Security of tenure exists when the other branches of government (executive or legislature) cannot remove the judge from office in discretionary or arbitrary manner until retirement or for life (United Nations Office on Drugs and Crime 41). A judge who has no security of tenure makes the decision that favors the executive or legislature to retain his position. Such a judge will not make his/her decision based on law and evidence before them.

Financial security implies rights of judges to non-reducible compensation while they are in office. Judges whose salary is reduced or increased upon the discretion of the executive or legislature have no decisional independence. They make their decision under the pain of reduction of their salary. For these judges basing a judgment on law and evidence is risky.

Article 78(1) of FDRE Constitution establishes independent judiciary both at federal and state level. Article 79(2) declares that judges are free from interference of any kind. The Ethiopian judiciary is immune from interference of the executive, legislature or any other body. Ethiopian judges enjoy security of tenure. As per Article 79(4) judges cannot be removed from their office arbitrarily or at the discretion of the executive or legislature.

Can House of People's Representative or Council of Ministers of FDRE reduce the salary of federal judges by Regulation or Proclamation?

Judicial independence is not simply a function of provisions governing judicial selection, compensation and retention of office (Jonson 1012). The judicial ethical norms play an important role in shaping the conduct of judges and giving concrete meaning to the idea of decisional independence (Ibid). Judges should be free from undue or inappropriate pressures when performing the duty of office.

The rules of code of judicial conduct bearing on decisional independence of judges are rules related to ex parte communication, gifts and certain problematic relationship (Jonson 1014).

Art 23 of federal Code of Judicial Conduct prohibits ex parte communication. It prohibits judges from discussing the merits of a case pending before a court. Judges cannot give any opinion on the case pending before the court to the media.

The rules against ex parte communication protect the fundamental rights to be heard (Johnson 1015). The rules help to ensure that judge's decision is based on nothing other than law and evidence (Ibid). Ex parte communication undermines the public confidence. It deprives the citizenry from the information that emerges from an open and transparent litigation process (Ibid).

Can a judge discuss the merits of the pending case with his wife?

Art. 23 of federal Code of Judicial Conduct does not make a distinction between person with whom the judge may discuss and persons with whom the judge may not discuss about the merits of the pending case. This provision bans not merely private communications between a judge and litigant, litigant's advocate or witnesses. It bans all private communication with the exception of communication between judges presiding over the same case. Even the communication with another judge who does not try the case is prohibited.

Does Article 23 of federal Code of Judicial Conduct prohibit ex parte communication on impending case?

Donation affects decisional independence of judges. Article 25 of federal code of judicial conduct prohibits judges from taking bribe, gifts or any other benefits in relation with decided cases. In pending cases or impending cases, donation to judges can create a sense of obligation on the part of the recipient and an expectation of reciprocal benefit on the part of the donor (Johnson 1018). Such expectations and obligations threaten to distort the adjudicatory process by creating a risk that decisions will be based on consideration other than merits. Donation to judges poses two dangers on the administration of justice (Ibid). There is a risk that a decision will be made by a judge who has been improperly influenced by a donation. Even if the judge has not been improperly influenced there is a risk that the public will perceive lack of impartiality. This perception of impartiality undermines public confidence in courts.

What kinds of donations are prohibited under Article 25?

The donations or other benefits prohibited under Article 25 are those received in consideration of the case decided (or that would be decided) by the judge. It does not mean that a judge cannot receive a birthday gifts from his /her daughter.

A prohibited donation and other benefits under Article 25 may take many forms. It may be for example “flight on an airplane, use of a condominium, cash payments, meals, a discount on wall paper or an unreasonably favorable on the purchase or rent of a car” (Ibid). When a judge receives a compensation for extra judicial activities that compensation should be less than or equal to the compensation that non-jurist receives for the same task. Thus, a judge who buys 10,000.00 Birr worth computer at 4,000.00 Birr is considered to have received 6,000.00 Birr as a donation. Similarly, a judge who is allowed to use a residence house for free is considered to have received a donation equal to the rent of the house.

Donation to the judge may be direct or indirect. It is direct when the judge personally receives donation or any other benefits. It is indirect when it is given to some other persons who have a relation with a judge. For example, a litigant settled the debt of judge or a daughter (son or wife of a judge) receives donation from persons whose case was decided (or going to be decided) by the judge . Article 25 prohibits both direct and indirect donations.

Certain problematic relationships that affect decisional judicial independence include family relations and extra-judicial activities. In these cases a judge may base his/her decision on something other than law and evidence (see rules governing impartiality and extra-judicial activities)

3.1.2 Accountability

According to Article 12 of the constitution, “any public official” or an “elected representative” is accountable for failure in official duties. Judges are not elected representatives as judges are appointed. Is a judge a public official?

Who are public officials under article 12 of the constitution? Will article 2(1) of proclamation No. 25/1996 be of any help?

"Officials of the Federal Government" means a member of the House of Peoples' Representatives and of the House of the Federation, officials of the Federal Government above ministerial rank, ministers, judges of the Federal Supreme Court and other officials of the Federal Government of equivalent rank;

Are Ethiopian judges accountable? To whom they are accountable?

Elected representatives are accountable to the people they represent. Thus, members of the parliament are accountable to the people (Article 54(4)). The executives are accountable to the House of Peoples' Representatives as per article 72(2).

Some say that the judiciary should not be accountable because of its independence as institution and of being unelected and enjoying security of tenure. Among these found Lord Donaldson the former English master of the Rolls and Justice Learned Hand. Donaldson says:

“Judges are without constituency and answerable to no one except to their consciences and the law (Cyrus Das 202)”

Justice Learned Hand in his conversation with his clerk, Sonny, says:

“Sonny... to whom am I responsible? No one can fire me. No one can dock my pay. Even those nine bozos in Washington, who sometimes reverse me, cannot

make me decide as they wish. Everyone should be responsible to someone. To whom am I responsible”?

Then the judge turned and pointed to the shelves of his library:

“To those books about us. That’s to whom I’m responsible (Cyrus Das).”

In today’s outlook of greater transparency and accountability in government, the judiciary cannot escape from close scrutiny for its performance and the conduct of its members. In this regard, there is a long held view that because judges discharge their duties most of the time in public and deliver reasoned judgments that are open for any one to read, they give sufficient account of themselves. For example, Justice Michael Kirby denounces any suggestion that judges are not accountable, and argues:

“We are— and have been for a long time—the most accountable branch of government in one sense: our decisions are made in open court. I spend the greater part of my working life performing my daily duties in public—that is not something that occurs in most fields of activity, certainly not in the bureaucracy. As well as that, the decisions of the court go through a whole range of review from the lower court to the highest court in the country and in that sense can be openly exposed, criticized, commented upon and justified in reasoned decision making. Now it is true that in this country, judges are not elected and in the sense they are not directly accountable to the people. But they are appointed by politicians who are accountable to the people (Cyrus Das 203-204)”

According to the Australian high court judge, Michael Kirby, Judges are accountable on three grounds. First, judges render decision in public. Second, decision of judges is reviewed by the appellate court. Finally, Judges are appointed by executives or legislature who is accountable to the people.

Michael Kirby also identified criticism and comment on judgments as accountability mechanisms. The right to comment and criticize judgments is an indispensable part of the accountability process. The judiciary is not immune from criticism like other branches of the

government. However, all public criticisms do not promote judicial accountability. Unwarranted and irresponsible criticisms undermine judicial independence. Former Chief Justice Bhagwati of India says:

There is a pernicious tendency on the part of some to attack judges if the decision does not go the way they want or if it is not in accordance with their views. Of course, there is nothing wrong in critically evaluating the judgment given by a judge because, as observed by Lord Atkin, Justice is not a cloistered virtue and she must be allowed to suffer the criticism and respectful, though outspoken, comments of ordinary men and women. But improper or intemperate criticism of judges stemming from dissatisfaction with the decisions constitutes a serious inroad into the independence of the judiciary and, whatever may be the form or shape which such criticism takes, it has the inevitable effect of eroding the independence of the judiciary.

Each attack on a judge for a decision given by him or her is an attack on the independence of the judiciary because it represents an attempt on the part of those who indulge in such criticism to coerce judicial conformity with their own preconceptions and, thereby, influence the decision making process.

It is essential in a country governed by the rule of law that every decision must be under the rule of law and not under the pressure of one group or another or under threat of adverse criticism by irresponsible journalist or ill-intentioned politicians, and if a judge is to be in fear of personal criticism by political or pressure groups or journalists while deciding a case it would certainly undermine the independence of the judiciary.

Unfortunately, this is what is happening in some countries and those who indulge in such improper or intemperate and even sometimes vitriolic criticisms or attacks on judges little realize what incalculable damage they are doing to the institution of the judiciary (Cyrus Das 207-208).”

Legitimate public criticism of judicial performance is a means of ensuring accountability. On the other hand, irresponsible criticism by the public, particularly by the politicians and journalists, undermine the judicial independence. In a jurisdiction where such irresponsible criticism exist, a judge makes a choice between:

1. a judgment based on her/his conscious understanding of the law and evidence, and
2. a judgment that does not subject the judge to public criticism (the judgment that favors the interest of the group e.g. executive)

Thus, judges cannot be independent when the judiciary is subjected to unwarranted and irresponsible criticisms of politicians and journalists. Such kinds of criticisms undermine the public confidence in courts and undermine acceptance for their decisions because the public knows that the decision is not based on law and evidence. The public does not bring cases to the court if it loses confidence in courts, which in final analysis undermines the democracy in that country.

Nowadays courts are not limited to the disputes between citizens. They also adjudicate cases between the government and the citizens. Courts have to declare the unconstitutionality of the law made by the legislature or the executives. This brings courts in conflict with the other branches of the government. For example, politicians criticized judges as “bogus”, pusillanimous and evasive”, “guilty of plunging [the country] into abyss”, “a pathetic self-appointed group of kings and queens etc.” in Australia. In Canada it is said the journalists have declared open season on the judiciary (Cyrus Das 209).

Some countries like India, Malaysia and Singapore used contempt power of the court to curb public criticism even when they are not irresponsible (Cyrus Das 210).

Another way of holding judges accountable for their deeds is by subjecting them to discipline for judicial misconducts. Review by the appellate court seeks to correct past prejudice to a particular party. On the other hand, judicial discipline seeks to prevent potential prejudice to future litigants and the judiciary in general. The reversal of a case on appeal does not necessarily protect the public from a judge who repeatedly and grossly abuses his judicial power. Moreover, the

discipline system's goal of preventing potential prejudice to the judicial system itself cannot depend on decision of the party to appeal. The possibility of an appellate remedy for a part in a particular case does not preclude disciplinary measures against the judge. That is, disciplinary proceedings do not depend on the availability of review by the appellate court (Gray).

Some courts have even questioned whether the invocation of judicial independence in judicial disciplinary proceedings misapplies the concept because judicial independence "does not refer to independence from judicial disciplinary bodies (or from higher courts) (Gray)."

In the traditional sense, the concept of an independent judiciary refers to the need for a separation between the judicial branch and the legislative and executive branches. Judicial independence requires a judge to commit to follow the constitution, the proclamations, Regulations, and other laws without intrusion from or intruding upon other branches of government (Gray). The constitutional measures meant to protect judicial independence were not intended to insulate individual judges from accountability to the world as a whole (including the judicial branch itself), but to safeguard the branch's independence from its two competitors (the legislature and the executive). Judicial independence does not equate to unbridled discretion to bully and threaten, to disregard the requirements of the law, or to ignore the constitutional rights of defendants.

The constitution of the FDRE specifically empowers judicial administration council to remove a judge for violating disciplinary rules(Article 79(4)(a)). Thus, the provision of Article 79(2), that prohibit interferece of the influence of any governmental body or governmental official does not mean judges are immune from disciplinary proceedings.

However, disciplinary proceedings should not be instituted against a judge for mere legal error. Subjecting a judge to discipline for legal error undermines the judicial independence. Part of the justification for the "mere legal error" doctrine is that making mistakes is part of being human and is inevitable in the context in which most judicial decision-making takes place. It is not unethical to be imperfect, and it would be unfair to sanction a judge for not being infallible while making hundreds of decisions often under pressure (Gray).

All judges make legal errors. Sometimes this is because the applicable legal principles are unclear. Other times, the principles are clear, but whether they apply to a particular situation may not be. Whether a judge has made a legal error is frequently a question on which disinterested and legally trained people can reasonably disagree. And whether legal error has been committed is always a question that is determined after the fact, free from the exigencies present when the particular decision in question was made. In addition, if every error of law or abuse of discretion subjected a judge to discipline as well as reversal, the independence of the judiciary would be threatened (Gray).

Judges must be able to rule in accordance with the law which they believe applies to the case before them, free from extraneous considerations of punishment or reward. This is the central value of judicial independence (Gray). If judges are subject to discipline for mere legal error, they will be confronted by two choices:

1. the decision based on conscious understanding of law and evidence, and
2. the decision that is less likely to subject him to discipline.

And, they most likely choose the second. In such situation, judicial accountability put judicial independence at stake. This attempt to establish accountable judiciary will erode judicial independence. In this case, judicial independence and judicial accountability cannot co-exist.

How can we promote both judicial independence and judicial accountability when they contradict? Should we opt for one? Which one?

To promote judicial independence and judicial accountability, mere legal error should not subject a judge to a discipline. In this way, judicial independence can be promoted. However, all kinds of legal errors should not go unpunished. Thus, clear error, pattern of legal error, decision made in bad faith and egregious legal errors should subject a judge to a disciplinary measures.

Clear legal error is an erroneous decision which is obviously wrong or when there is no confusion or a question about its legality. It exist when an action of a judge is in contrary to clear

and determined law about which there is no confusion or question as to its interpretation. There is no clear legal error when the correctness of judge's decision is debatable or when an error of law is de minimis. An appellate court's reversal of a judge's decision alone is not a sufficient proof that the judge committed a legal error justifying sanction (Gray).

Pattern of legal error warrants disciplinary measures. When the legal errors are repeated even though they are not the same, they will subject a judge to a discipline. Decision made in bad faith subjects a judge to a discipline. In such case, a judge acts within lawful power for committing a corrupt acts. For example, when a judge sets bail very high to revenge the defendant (Gray).

Egregious legal error is a serious legal error particularly involving the denial to individuals of their basic or fundamental rights.

3.1.3 Impartiality

Impartiality is one of the basic ethical duties of judges in performing judicial activities. It is the fundamental quality of a judge and the care attribute to judiciary (United Nations Office on Drugs and Crime 57). According to value 2 of Bangalore Principles of Judicial Conduct, "impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made"

The Federal Code of Judicial Conduct in its preamble emphasizes that impartial administration of justice is the goal of independent judiciary.

Impartiality and independence are separate and closely related ethical duties of judges. Impartiality and independence are mutually reinforcing. Independence is the necessary precondition to impartiality and is a prerequisite for attaining impartiality (Ibid). Impartiality cannot exist without independence but independence can exist without impartiality. Thus, an independent judge who is free from any influence whether from other wings of government (executive & legislature) or any other persons could be partial due to his own perception or interest.

There are two aspects to the requirement of impartiality (ibid). They are subjective and objective impartiality. Subjective or real impartiality exists when a judge has prejudice or bias towards one side or another or a particular result. For example, a judge who is predetermined to rule in favor of the plaintiff despite the merit of the case is subjectively partial. Subjective impartiality is usually presumed to exist (ibid). Its purpose is to preserve the interests of the litigants.

Objective or perceived impartiality exists when a reasonable observer is free from legitimate doubt in the impartiality of the court (ibid). The personal conduct of the judge does not matter. Whether the judge is actually biased or not will not be taken into consideration to determine the existence of objective impartiality. There are persons of high integrity who rules against their interest or interests of their relatives. Such persons determine the matter impartially. But, the involvement of the interests of such judges or their relatives may give a reasonable observer the perception that those judges are not impartial. The purpose of ethical requirements of objective impartiality is to avoid such perception in the members of the courts. Perception of partiality erodes public confidence in courts — one of the value to be achieved by Federal Code of Judicial Conduct.

Should the perception of one of the parties, say an accused, be sufficient to determine the non-existence of impartiality?

The question is whether the perception of a person is reasonable or not. It does not matter whether such person is plaintiff, defendant or third party. Unreasonable perception does not imply lack of objective impartiality.

What is bias or prejudice?

There is subjective or real impartiality when a judge has a prejudice or bias against one of the parties. Bias is an inclination or prejudice (Garner 124). Prejudice is a preconceived judgment formed without a factual basis (ibid). Bias or prejudice is “a leaning, inclination, bent or

predisposition towards one side or another or a particular result” (United Nations Office on Drugs and Crime). Bias is a condition or state of mind an attitude, or point of view which sways or colors judgment and renders a judge unable to exercise his or her functions impartially in a particular case”(Ibid).

Judges may express their bias in words or physically. Abuse of contempt power is a manifestation of bias or prejudice. Thus, if judges use words that are offensive to one ethnic group they manifest their bias towards the members of those ethnic groups. Similarly, if judges inappropriately punish a party, witness or lawyer for contempt of court, there is a manifestation of bias or prejudice.

What kinds of conduct should a judge avoid to be objectively impartial?

Principle 2.2 of Bangalore Principles of Judicial Conduct provides that

“A judge shall insure that his or her conduct both in and out of court maintains and enhance the confidence of the public the legal profession and litigants in the impartiality of judge and of the judiciary”

Judges must avoid any action which in the mind of reasonable person would give rise to a reasonable suspicion of a lack of impartiality in the performance of judicial functions (United Nations Office on Drugs and Crime 61). In the court of law, judges should avoid unjustified reprimand of advocates insulting and inappropriate remarks about litigants and witnesses (Ibid). Judges should avoid constant interference in the conduct of the case (Ibid). Judges should not place themselves in the position of an advocate to examine or cross examine witnesses. Judges have the right to pose questions to witness to clarify an issue. But, that right should not go to the extent of asking questions that must be asked by the parties or their advocates.

In addition, judges should avoid ex parte communication with parties or their representatives. In this regard Article 23 of Federal Code of Judicial Conduct prohibits judges from discussing the merit of a pending case with any other body. Thus, judges cannot discuss the matter let alone with parties and their advocates even with their close friends and relatives.

Outside the court, judges should avoid making statements that show their partisanship with certain political parties. Such statement creates an appearance of partiality, particularly when the parties before the court belong to the party opponent to other party to which judges expressed their partisan opinion.

Conflict of interest of judges in the case gives rise to both actual and perceived partiality. Thus, the judge should reduce the possibility of conflict of interest. When conflict of interest occurs, the judges must recuse themselves or be disqualified or to use the words or article 27 of Proclamation No. 25/1996 (Federal Courts Proclamation) the judges must withdraw from the cases.

According to Article 24 of the Federal judges Code of Judicial Conduct, judges must recuse themselves of their own motion as soon as they are aware of grounds on which the law prohibits them from sitting over the case. These grounds are provided under Article 27(1) of Federal Courts Proclamation No. 25/1996. These grounds are:

- i. Connection of a judge with parties or their advocate [Article 27(1)(a), (b)&(d)]
- ii. Connection of the judge with a case [Article 27(1)(c)] and
- iii. Other grounds [Article 27(1)(e)]

In all of these three cases a judge should not wait for the application of the parties. If a judge does not recuse him/herself, he/she will be disqualified by the request of the parties. Parties will pay for inappropriate application of disqualification. Now, let us discuss each grounds of recusal.

i) Relation with Parties or their Advocates

Judges must recuse themselves when one of the parties or their advocates is their relatives by consanguinity or affinity. Thus, judges should not preside over the cases between their brother or their brother in law and other persons.

What is the degree of relationship beyond which the judges have no duty to recuse themselves?

Judges should not also preside over a case in which they are related by consanguinity or affinity to advocates of the parties. For example, a judge is required to recuse himself/herself if the advocate of the defendant is his/her cousin.

Article 27(1)(b) provides for relationship other than relationship by consanguinity or affinity. Thus, judges who have no consanguinity or affinity relationship are required to recuse themselves, if they previously acted as a legal representative, tutor or advocate of one of the parties.

Can a representation arising from contract be a ground of recusal?

For example, Mr. Sifan was an advocate in federal courts until March 2007. During his advocacy he represented Mr. Beckant in a suit against Ethiopian Insurance Corporation and won the case. In March 2008 Mr. Sifan was appointed as a judge in the federal high court. If a suit by Mr. Beckan against Ethiopian Insurance Corporation came before Mr. Sifan, he has to recuse himself from the case.

Article 27(1)(d) provides an evidence for adverse relationship between the judges and the parties or their advocate. Judges like any other persons have economic, social or other relationship with others. Thus, if Mr. X a first instance court judge sues Mr. W, a trader, in high court for non-performance of a contract, Mr. X must recuse himself in a case in which W sues Z before the first instance court so far as the case before high court is not finally decided.

Has a judge a duty to recuse himself/herself from the case in which he/she is about to sue one of the parties before him/her?

ii. Relation with the Matter

Judges should recuse themselves when they had a connection with the matters before them. They may have acted in certain capacities before. For example, a judge was a material witness on the

matter or a judge previously decided the matter as an arbitrator, civil servant or participated in a matter as a conciliator or mediator.

Thus, a judge who previously decided the case as an arbitrator must recuse himself/herself from the case.

iii. Other Grounds of Recusal

Article 27(1)(e) provides a catch for all grounds of recusal. This provision makes the grounds provided under Article 27(1) (a) to 27(1)(d) illustrative examples of ground of recusal. Thus, other grounds which are sufficient reasons to conclude that injustice may be done and fall under this category. Such ground may include social or business relationship of a judge, personal knowledge of evidence, personal relationship not covered under Article 27(1)(a) to 27(1)(d).

Upon assuming judicial, office persons do not withdraw from the society. They have life off the bench (Abramson 95). Judges have social and business relations with others. For example, judges may participate in social associations like “*idir*” or “*iqub*”. They may also carry out certain religious activities. They may attend church or mosque. Judges may also participate in business. They may hold share in certain business organization or they may have a commercial minibus or run a hotel.

Should a judge withdraw from a case in which he/she has social or business relationship with one of the parties or their advocates within the meaning of Article 27 of Proclamation No. 25/1996 (as amended)?

Consider the following hypothetical case. Kebede has been serving as a judge for the past five years. He carries out his judicial activities competently and diligently. He is not only a diligent and competent judge but also a man of high integrity in his religious life. Kebede usually attends St. Mary’s church. Due to his high moral integrity he was given a post in the administration of St. Mary’s church. He works in cooperation with Tefera a respected senior priest. Tefera is trusted not only by Kebede but also by the community at large. Yesterday Kebede could not believe his eyes. Charged with rape, Tefera was in the court room with two policemen. Should

Kebede preside over Tefera's case? On what ground should he recuse himself? Does he violate federal courts' Code of Judicial Conduct if he fails to recuse himself?

The same situation may occur in business and other social relation. For example, a Toyota car of Ms. Asanty a federal high court judge, run over a pedestrian Mr. Bekele. Can Ms. Asanty preside over a compensation claim by Mr. Bekele? These cases of business and social relation do not fall under Article 27(1)(a) to Article 27(1)(d). Then the question is whether injustice may occur if Kebede or Asanty presided over the case. In cases of Kebede, there is a possibility of believing what Tefera says whether he tells the truth or not. It negatively affects the evidence of the prosecution. In the cases of Asanty, there could be prejudice to the rights of Bekele. Thus, in both cases injustice may occur. As a result, the judges (Kebede and Asanty) are supposed to recuse themselves as per Article 24 of Code of Judicial Conduct of federal judges and Article 27(1) (e) of Proclamation No.25/1996 (as amended).

Every social or business relationship should not be a ground of recusal or withdrawal of a judge from the case. The fact that the judge and one of the parties or their advocate attend the same church or pray in the same mosque could not be a ground of recusal. Similarly, if a judge and one of the parties or their advocates belong to one *idir* the judge's impartiality should not come into question. In particular, the following factors should be taken into consideration to determine recusal whenever a judge or judge's relative has a social or business relationship or contact with an advocate, party, victim or witness (or their close relatives).

- 1) The duration of the relationship or contact;
- 2) The content of any conversation during the relationship or contact;
- 3) The nature and circumstances of the relationship or contact;
- 4) The frequency of meetings or conversations;
- 5) The personal dependence on the relationship;
- 6) Whether the relationship was connected with the subject matter of the proceeding;
- 7) In a business relationship, whether the judge receives preferential treatment not granted to others;
- 8) Whether the relationship has been the subject of media publicity; and
- 9) Statements attributable to the judge or any other person about the relationship (Miller).

Personal knowledge of disputed facts could be a ground of recusal for the judge. Judges may acquire certain knowledge about the case or the parties before a case is assigned to them. Such knowledge may also be gained from an extra judicial source or personal inspection by the judges while the case is on going (United Nations Office on Drugs and Crime 74).

How personal knowledge of disputed fact affect the impartiality of a judge?

Judges are required to base their decision on law and evidence. However, when a judge has a personal knowledge of the disputed facts (s), he may depend on his knowledge to determine the dispute rather than the testimonies of the witnesses or other evidences produced by the parties.

All knowledge of disputed facts cannot be a ground of recusal. For example, personal knowledge of disputed facts cannot be a ground of recusal when it is acquired from prior ruling in the same case or through adjudication of a case of related parties to the same transaction because the party had appeared before a judge in a previous case.

The relationship between a judge and parties to the suit or their advocates provided under article 27(1) of Proclamation No. 25/1996 is not exhaustive. For example, it does not cover relations like romantic relationship, or friendship. These relationships have equal power with a relationship by consanguinity or affinity. A person who favors his relatives by consanguinity or affinity also favors his/her lover or friend. Thus, it could safely be concluded that injustice may be done to the parties when one of the parties or their advocates are judge's lover or friend.

3.1.4 Competence and Diligence

Incompetence and inefficiency is a ground of removal of judges as per article 79(4) of the Constitution of FDRE. The decision of state or federal judicial administration council should be approved by two-third majority vote of state council or house of people's representatives to remove a judge from judicial office. When incompetence and inefficiency does not subject a judge to removal from the office it will subject a judge to other disciplinary measures.

The ethical duty of competence requires “legal knowledge, skill, thoroughness and preparation” (United Nations Office on Drugs and Crime 129). A competent judge is well versed with law. Such judge also has the skill required to carry out his judicial function. For example, a judge should have a skill to write summons, judgment, dissenting opinions. A competent judge should carry out his judicial activities with thoroughness. That is he/she should carry out his/her judicial activities with necessary care in a detailed way so that nothing is forgotten. If Judges make thorough decision they leave no issues unanswered. Judges should also make a necessary preparation.

The use of alcohol or drug or the physical or mental impairment of a judge affects his/ her competence. No reasonable people make a sound judgment under the influence of alcohol or drug. Similarly physical impairment like hearing disability may affect the competence of a judge as a judge should hear the testimony of witnesses and make decision based on that testimony.

A judge is diligent when she/he “considers soberly, decide impartially and act expeditiously” (Ibid). Judges have an ethical duty to seriously and thoughtfully consider the matter before them. Their decision should not involve bias or prejudice. It should be based on law and evidence. Diligent judges determine the matter expeditiously for they should not waste time or energy.

Diligence can be affected by the burden of work, adequacy of resources, time for research, deliberation and writing, and judicial duties other than sitting in courts (Ibid). A judge who has a lot of cases coming to his bench cannot be expected to dispose of the cases within few days.

According to Article 4 of the code of judicial conduct, the principal duty of any judge is to apply the law in force in the country. This duty presupposes the judge’s knowledge of the law. That is, a judge cannot properly ignore or claim ignorance of law. Judges have duties to enhance and maintain their knowledge, skills and personal qualities necessary for the proper performance of judicial duties (Bangalore Principles of Judicial Conduct, Paragraph 6(3)). They should make efforts to enhance their legal knowledge (Article 6 of Federal Courts Code of Judicial Conduct).

This duty to enhance legal knowledge may be carried out individually and collectively. Every judge has individual duty to read laws and books, articles, journals and other sources on law. They should be aware to keep in touch with the changes in law and legal system. Collectively, judges have ethical duties to organize training particularly to newly appointed and inexperienced judge. Of course, failure to participate or refusal to participate in such training amounts to violation of code of judicial conduct.

Training is a major way of enhancing and maintaining legal knowledge. Training is essential for competent and diligent performance of judicial duties. This training should not be limited to the technical field of the law (United Nations Office on Drugs and Crime 134). It should extend to important social concerns such as gender, race, indigenous cultures, religious diversity, HIV/AIDS status and disability (Ibid).

Expeditious disposition of a case is one aspect of diligence. It requires judges to decide the matter with reasonable promptness (Bangalore Principles of Judicial Conduct, Paragraph 6(5) and Article 7 of code of judicial conduct of federal judges). Judges should eliminate any avoidable delays and unnecessary costs (UNODC 138). To this effect, judges should encourage parties to settle their matter amicably. However, efficiency does not entitle a judge to disregard the right of the parties to be heard. Another duty to be diligent is the duty to be punctual. Article 22 of code of judicial conduct of federal judges requires judges to respect the working hours of the court. Judges cannot be absent from their duties as they wish. It goes without saying that the judge should be punctual. If judges are not punctual or if they are absent from work they cannot be diligent because they will not have enough time to carry out their judicial activities. Failure to respect working hours also has negative effect on expeditious disposition of the case. Absence from duty or failure to be punctual must be without reasonable cause or permission to violate the code of judicial conduct.

- ✓ Can a judge be absent from duty for a month on a reasonable cause without violating a code of conduct?
- ✓ If a judge is late for 45 minutes from duty for two days, did she/he violate code of judicial conduct?
- ✓ What are the reasonable causes under Article 22 of code of judicial conduct of federal judges?

Under Bangalore principles of judicial conduct, judges are required to maintain order and decorum in all court proceedings (Bangalore Principles of Judicial Conduct, Paragraph 6(6)). “Order refers to the level of regularity and civility required to guarantee that the business of the court will be accomplished in conformity with the rules governing the proceeding” (UNDDC 140). Judges should ensure that the arguments of the parties are made with politeness. They should not allow parties or their advocates to insult other parties. “Decorum refers to the atmosphere of attentiveness and participants and to the public that the matter before the court is receiving serious and fair consideration” (Ibid). Thus, judges should not allow the member of the public present in the court to behave in a manner that attracts the attention of the judge and the parties. For example, judges should take necessary measures to avoid interruption of the proceeding due to disturbing noises made by the public. Article 11 of Federal Judges code of judicial conduct requires judges to take necessary and corrective measures against the party who behaves improperly or who tries to delay the disposition of the case through inappropriate means. Thus, maintaining order and decorum of the court is one aspect of ethical duty of judges to be competent and diligent. A judge who allows the parties or others in the court to show improper conduct that affects the hearing of the case is not considering the matter soberly.

- ✓ Does Article 11 of the Federal code of judicial conduct encourage the judge to use contempt power of the court?
- ✓ What are the measures that can be taken against the party who improperly behaves in the court room?

Patience, dignity and courtesy are essential attributes of ethical duty of competence and diligence (UNODC 141). Judges should be patient, dignified and courteous in relation to litigants, witnesses, advocates and others (Bangalore Principles of Judicial Conduct, Paragraph 6(6)). Article 18 of Federal code of judicial conduct requires the judge to be thoughtful, courteous, patient and careful.

The way judges behave is crucial to maintain their impartiality. Improper behavior toward parties or their advocates conveys an impression of bias. Disrespectful behavior towards litigants infringes their rights to be heard and compromise the dignity of the court (Ibid). Impolite treatment of the parties affects their satisfaction with handling of their cases. Thus, judges should always act courteously and respect the dignity of all before them. Unjustified reprimands of advocate, offensive remarks about litigants are some of conducts contrary to Article 18 of the code of judicial conduct.

If an advocate insults a judge and the judge replies with similar insult, does she (judge) violate the code of conduct?

3.1.5 Equality

According to Article 5 of federal Code of Judicial Conduct, a judge shall equally treat all litigants before the courts and protect their right. Thus, a judge shall not allow family, religion, nation, nationality, political, social or other relationship that affect the performance of judicial office.

Many international instruments like International Convention on Civil and Political Rights, International Convention on Economic Social and Cultural Rights, Convention on Elimination of all forms of Discrimination against Women. Constitution of the FDRE prohibits discrimination on the ground of race, nation, nationality, color, sex, language, religion, political opinion, property, birth or other grounds. These Laws recognize that equality before Law is essential attribute of justice. According to federal Code of Judicial Conduct, equality is a feature of judicial performance strongly linked to judicial impartiality. Failure to equally treat all before the court implies partiality of the court.

In promoting equal treatment of all before the court a judge should avoid stereotyping, gender discrimination and derogatory comments. Judges should not form a fixed idea about the parties which may not really be true. For example, a judge should not be influenced by the attitude of

the society that a member of certain ethnic group is potentially criminal. A judge should correct such stereotyping. Judges should ensure that the court offers equal access to men and women. Judges should avoid speech, gesture, or conduct that shows gender discrimination. Thus, commenting on physical appearance of female lawyers may be perceived as sexual harassment.

Judges should not manifest prejudice towards any person or group on irrelevant grounds, judges should avoid comments gesture, expression or behavior that may reasonably interpreted as showing disrespect. They should also avoid insulting remarks.

Judges should have the duty to ensure that court staff, parties to the suit and lawyers do not discriminate others on irrelevant grounds.

3.1.6 Civility among Judges

Civility is a politeness or courtesy. Intemperate criticism of a fellow judge is incivility. Incivility implies lack of respect and cooperation among judges. Article 9 of Code of Judicial Conduct requires federal court judges to carry out their judicial duties in cooperation with their colleague. It requires judges to respect one another. Administration of justice is a team work. Lack of cooperation among judges seriously undermines team spirit. Thus, civility among judges is one of the hallmarks of judicial temperament (Ross 958). Judges must be models of civility.

Judges make opinions when they decide a case. They make critical comments about other judges or the courts or judiciary while they decide a case. Judges could also make critical comments of other judges in public or in private though they are not deciding a case, for example, in media. These critical comments whether they were given in a court records in the form of the majority or dissenting opinion or opinion of appellate court judges whether they were given off the court record in public or private, they usually give rise to issues of civility among judges.

Judges should avoid making personal attack of fellow judges when they write majority opinions, concurring opinions or dissenting opinions. Thus, it is incivility to derogate the dissenting opinions as 'foolish'. Appellate court judges should avoid personal attack on lower court judges.

They should bear in mind that they are sitting “in judgment of cases, not fellow judges” (Ross 959).

Personal attack, whether it is made by a judge writing majority opinion or appellate court judge, has nothing to do with administration of justice. Rather, it erodes public respect for the appellate court. The reversal of the decision is a reprimand for a lower court judges. Other criticism on the judge is superfluous. Personal attack may also decrease judge’s influence among his or her colleagues (Ross 961).

Judges should not criticize another judge in public. For example, Judge Anatoly, a federal high court judge, should not say that Judge Sifan, a federal first instance court judge, is incompetent, corrupt etc. Such criticism results in loss of faith in the quality of justice dispensed by the judge who was subjected to the criticism. It also casts doubt on the temperament of the criticizing judge.

3.2 Ethical Requirements of Judges in Extra Judicial Activities

Extra judicial activities are activities that have no connection with judicial duties. Judges are human beings They have economic, social, political, religious, commercial and other relationship with other persons. They have live off the bench. Virtually every judge must save shelter, invest and/or retain funds, whether they were accumulated prior to taking the bench or simply as a matter of prudent disposition of current income (Lubet 1). Thus, every judge engages in some sort of financial activities.

Assuming no conflict of interest no interference with a particular case what activities are forbidden for judges?

Federal code of judicial conduct does not prohibit particular business or other activities. Art. 28 prohibit in general term activities which are in consistent with judicial duties under Art. 27 judges are prohibited form using the office for advancing personal interest.

What are activities that are inconsistent with judicial duties?

In some jurisdiction judges are allowed to carry out certain activities and prohibited from carrying out others In United States judges are prohibited to perform certain activities like practice of law. The principal goal of prohibiting or restricting judges from engaging in certain extra judicial activities is not to discourage business arrangements of judges (Lubet 3). The purposes of restriction or prohibition are avoiding the appearance of partiality.

The rules restricting activities that are inconsistent with judicial duties are aimed at avoiding the activities that might interfere with judicial duties eliminating conflicts of interests between judges and parties or their lawyers avoiding misuse of judicial office and preserving judicial dignity (Lubet 4). The following are some lists of activities that are allowed or prohibited for judges.

1. Passive Investments

In US, passive investments are allowed for judges. Passive investment includes the ownership of stocks, bonds, mutual fund shares, and other financial instruments (Lubet 5). Lubet argues that it is impossible to prohibit passive investment as passive investment seldom raise question of partiality, indignity or interference with judicial duties. Passive investment is not time consuming because judges can manage passive investment either after hours or during breaks, in judicial day.

Passive investment raises the problem of conflict of interest (Lubet 6). Judges should disqualify themselves whenever there is conflict of interest. According to paragraph 23 of Bangalore principles of judicial conduct, judges should reduce possibility of refusal or disqualification from the bench. Recusal or disqualifications are unavoidable however; judges have ethical duty to reduce unnecessary conflicts of interest that have ethical duty to reduce unnecessary conflicts of interest that arise when the judge retains financial interests in organizations and other entities that

appear regularly in court (United Nations Office on Drugs and Crime 63). The duty to reduce the possibility of recusal is imposed on judges because recusal works some burden on the parties, their advocates and delays the administration of justice and imposes disproportionate workloads for the other members of the court. Thus, a passive investor should reduce the possibility of recusal or disqualification.

Exploitation of judicial office may arise in the context of passive investment though it is not frequent as in real favor seeking and trading active business involvement and/or charitable promotion or actual corruption (Lubet 9). A judge who uses a confidential information that she/he obtained through the course of proceeding to develop real interest in property and who pressurizes the litigant to sell the property to her/him at unfavorable law price exploit judicial office- in such cases passive investment is prohibited.

Even passive investment in certain areas like establishments that hold liquor and gambling license is prohibited in US because such business may be considered either undignified or inherently corrupting.

2. Active Management and Involvement in Business

Active Management may be seen as the use of time and energy to earn additional income beyond the judicial salary (Lubet 14). In US judges are prohibited from serving as officer, director, manager, advisor or employee of any business.

Of course in many instances serving as officer, director, manager, advisor or employee of any business adversely affects impartiality, interferes with proper performance of judicial duties or involve a judge in frequent transaction with an advocate or persons likely to come before courts. Irrespective of these possibilities, judges are totally prohibited from managing and getting involved in business.

As any financial activities becomes more active personal and time consuming, they are more likely to be prohibited even if they do not interfere with judicial duties (Ibid).

3. Practice of Law

Bangalore Principles of Judicial Conduct prohibits from participating in practice of law. It provides under paragraph 4(12) that “a judge shall not practice law whilst the holder of judicial office. “Practice of law includes work performed out side of a court and that has no immediate relation to court proceeding. Some examples of practice of law are convincing and giving legal advice on a wide range of subjects preparing and executing legal instruments covering an extensive field of business and trust relation and other affairs” (United Nations Office on Drugs and Crime 114)) preparing court pleadings and legal documents such as will and contracts are also prohibited (Lubet 32).

In US, what Article 2 of proclamation No. 199/2000 calls advocacy service is prohibited for judges. Thus, practice of law is synonymous with advocacy service. This prohibition of practice of law extends to minor representation of close family members. The only exception in this regard is the judges who represent themselves. Even in that case a judge should take care not to create the appearance of receiving favored treatment.

4. Serving as a Fiduciary

Judges are prohibited from acting in a fiduciary capacity under ABA model code of judicial conduct and Bangalore principles of judicial conduct. Judges are barred from serving “as executors, administrators, trustees, guardians or other fiduciaries” (Lubet 35). It does not matter whether judges receive remuneration for their services or work for free.

The prohibition is due to the concern that private parties might appear to gain some advantage by obtaining a judge to act as executor trustee, administrator or guardian (Ibid).

The only exception to the prohibition to serve as a fiduciary is the cases of family member and close friends. “A judge may act as executor, administrator, trustee, guardian or other fiduciary or the estate trust or person or a family member or close friend if such service does not interfere with the proper performance of judicial duties, provided the judges does so without

remuneration” (United Nations Office on Drugs and Crime 113). The rationale is that family service is a sufficient countervailing factor to outweigh whatever appearance of advantage to other parties (Ibid).

5. Arbitration and Mediation

Arbitration and mediation are mechanisms of dispute settlement out of court. An arbitrator or mediator usually receives remuneration for setting dispute In Us. ABA model of code of judicial conduct bars judges from acting as an arbitrator or mediator. The prohibition applies even if the arbitrator or mediator does not interfere with judicial duties because the arbitration or mediation does not interfere with judicial duties.

Because “the arbitration proceeding could come before the court on which the judge sits courts could be drawn into social and political controversies in which a judge acted as an arbitrator the judicial office could be exploited in an arbitrator. The judicial office could be exploited in an effort to secure its dignity, and it could be diverted in a case in which a judges fee would be thousands of dollars” (Lubet 37).

“The integrity of the judiciary is commonly thought to be under minded if a judge takes financial advantage of the judicial office by rendering private dispute resolution services for pecuniary gain as an extra judicial activity” (United Nations Office on Drugs and Crime 114).

6. Education

Judges may participate in community and/or legal education. Paragraph 4(11) of Bangalore principles of judicial conduct provides that “Subject to proper performance of judicial duties, a judge may write, lecture, teach and participate in activities concerning the law the legal system, the administration of justice or related matters”

“A judge is in a unique position to contribute to the improvement of law, the legal system and the administration of justice both within and out side judge’s jurisdiction. Such contribution

may take the form of speaking writing teaching or participating in other extra judicial activities” (United Nations Office on Drugs and Crime 115).

A judge may contribute to legal and professional education by delivering lectures participating in conference and seminars judging student training hearings and acting as examiner. A judge may also contribute to literature as an author or editor. Such professional activities by judges are in the public interest and are to be encouraged.

The restriction on judges in this regard is that judges must avoid commenting on any pending or impending case. They must take care that writing, lecturing teaching and the like should not interfere with judicial duties, for example, by consuming a lot of judges time.

7. Political Activities

Judges should not participate in political activities. According to Article 8(2) of Proclamation No. 24/1996 (Federal Judicial Administration Commission Establishment Proclamation), “[n]o person may simultaneously assume judgeship (...) while a member of any political organization.” This provision prohibits membership in a political organization.

Can a judge participate in political activities if he is not a member of any political organizations?

For example, in US a judge cannot

- make speeches on behalf of a political organization;
- publicly endorse or oppose a candidate for any public office;
- solicit funds for, pay an assessment to, or make a contribution to a political organization or a candidate for public office;
- attend or purchase tickets for dinners or other events sponsored by a political organization or a candidate for public office;
- seek, accept, or use endorsements from a political organization; (ABA MODEL CODE OF JUDICIAL CONDUCT, FEBRUARY 2007)

8. Membership in Organization

Judges, like any other citizens, have freedom of association in exercising this. Right judges may join a trade union or professional association established to advance and protect the conditions of service of or salary of judges or to gather with other judges for trade union or association of that nature (United Nations Office on Drugs and Crime 116). “Judges may also participate in community, non profit making organization and its governing body, examples, include charitable organization, university or school councils, religious body, hospital boards, social clubs sporting organizations and organizations, promoting cultural or artistic interest. However,

1. It would not be appropriate for judge to participate in an organization if its object is political if its activities are likely to expose the judge to public controversy or if the organizations are likely to be regularly or frequently involved in litigation.
2. There should not be excessive demand on time of judge
3. A judge should not serve as legal advisor.
4. A judge should not lend his name in any fundraising

3.3 Appointment, Withdrawal, Transfer, Promotion and Removal of Judges

3.3.1 Judicial Appointment

Judicial selection, appointment, and promotion procedures govern the recruitment and staffing of courts, and may serve as a primary condition for ensuring judicial accountability. However, judiciaries may be subject to different external and internal pressures depending on whether judges are appointed by the executive and legislative branches, or recruited and promoted from within a career judiciary or from a national civil service system.

The selection, appointment, and promotion procedures, as well as the transparency of those procedures are important for both securing judicial independence and promoting public understanding and confidence in the courts. Judicial independence and accountability, however, may be secured through a variety of institutional arrangements.

In general, countries with career judiciaries tend to promote the institutional independence of courts. In countries with career judiciaries, the selection, appointment, and promotion of judges are made from within a judicial career system or civil service. At the same time, career judicial systems may invest a great deal of control in, for example, the chief justice and/or judicial service commission like judicial administration council, which in turn may constrain and punish the independence of individual judges.

Non-career judicial selection and promotion procedures are made through appointment by the executive, legislature, or some combination, as well as by partisan and non-partisan elections. This kind of judicial selection and promotion procedures tend to promote judicial accountability to external forces, such as the government, political parties, interest groups, and the public. Still, they do so at the price of limiting the independence of courts as a whole and of individual judges.

In the US and Canada, for example, non-career judicial appointment is adopted. Within South and Southeast Asia, most countries employ some form of career judiciary or mixed career and non-career mechanisms for judicial selection and appointments, depending on the level of court involved. The exceptions are in countries in which the executive and/or legislature and political parties determine the selection, appointment, and promotion of judges, as in Cambodia, Lao PDR, and Viet Nam. In these countries, the legal training, standards and qualifications of judges tend to be lower than in countries with career judicial systems.

3.3.2 Judges' Tenure and Removal Mechanisms

Judicial tenure and the mechanisms for disciplining and removing judges are as important for securing judicial independence as the processes for selecting, appointing, and promoting judges. Tenure on the bench contributes to insulating judges from external pressures and to their independence on the bench. Judges need not be assured of life-time tenure, but too limited terms of office may impair the development of judicial independence. So too, mechanisms for disciplining and removing judges are necessary for ensuring judicial accountability and preventing the miscarriage of justice due to impairments and disabilities on the bench. However,

judicial tenures that are too short; mandatory retirement at relatively young ages; and ad hoc, arbitrary and opaque procedures for disciplining and removing judges may undermine the prestige of judgeships and the institutional independence of the courts.

3.3.3 Criteria for Appointment

Different countries use various criteria for appointing a person to a judicial office. The following are some of the qualities that a judge should possess.

1. Legal Skills

The principal quality requisite from the judge is the possession of, or the capacity to develop, professional legal skills of the kind required for judicial work. These skills include knowledge of evidence, procedure and practice, knowledge of the law, analytical ability, a capacity to dispose of a case smoothly and efficiently and a capacity to give a well-reasoned decision with reasonable promptness.

2. Personal Qualities

Certain personal qualities are indispensable. These are qualities like integrity, impartiality, industry, a strong sense of fairness and a willingness to listen to and understand the viewpoint of others. No doubt other qualities are desirable. Because justice is no longer a cloistered virtue, an ability to communicate to the legal community and the public about the law and the work of the courts is more highly valued than it was.

3. Particular Qualities for Particular Courts and Judicial Offices

It is obvious that particular qualities may be required for judges appointed to specialist courts. Likewise, particular qualities may be required for particular judicial offices. The position of Chief Justices, heads of courts and divisional leaders and judges who may have special administrative responsibilities require different particular qualities.

3.3.4 Appointment of Judges in the United States

Justices of the Supreme Court, judges of the courts of appeals and the district courts, and judges of the Court of International Trade, are appointed under Article III of the Constitution. They are nominated and appointed by the President of the United States and must be confirmed by a majority vote of the Senate. Article III judges are appointed for life, and they can only be removed by the Congress through the impeachment process specified in the Constitution. The judiciary plays no role in the nomination or confirmation process.

The primary criterion for appointment to a federal judgeship is a person's total career and academic achievements. No examinations are administered to judicial candidates. Rather, a person seeking a judgeship is required to complete a lengthy set of forms that set forth in detail his or her personal qualifications and career accomplishments, including such matters as academic background, job experiences, public writings, intellectual pursuits, legal cases handled, and outside activities. Candidates also are subject to extensive interviews, background investigations, and follow-up questioning.

Politics is an important factor in the appointment of Article III judges. Candidates are normally selected by the President from a list of candidates provided by the Senators or other office holders from the President's own party within the state in which the appointment is to be made. In addition, the President's nominee must appear in person at a hearing before the Judiciary Committee of the Senate, and the Senate must vote to confirm each judge. Article III judges are usually nominated by the President from among the ranks of prominent practicing lawyers, lower federal court judges, state court judges, or law professors who reside within the district or circuit where the court sits.

Each federal judge is appointed to fill a specific, authorized judgeship in a specific district or circuit. Judges have no authority to hear cases in other courts unless they are formally designated to do so. Because of heavy caseloads in certain districts, judges from other courts are often asked to hear cases in these districts (Administrative Office of the U.S. Courts).

3.3.5 Appointment and Removal of Judges in India

In India, judges of the Supreme Court are appointed by the executive and judiciary. The legislature has no role in the appointment of the judges. But the judges of the Supreme Court cannot be removed from their office without the assent of the legislature. Read the following excerpts from *Shukla's Constitution of India* on appointment of judges of the Supreme Court.

Every judge of the Supreme Court is appointed by the president by warrant under his hand and seal. The president's power of appointment of judges is not unfettered. The constitution expressly required him to consult such judges of the Supreme Court, and of the high courts, as he may deem necessary. It also requires him to always consult the chief justice of India in the appointment of a judge other than the Chief justice of India. According to the court's interpretation of these provisions the process of appointment of the judges is initiated by the chief Justice through a collegiums consisting of himself and four of the seniormost judges of the court. The recommendation of the collegiums is binding on the president. He may, however, not appoint a person whom for specific reasons does not consider suitable for appointment. In such case the collegiums must reconsider its recommendation. On reconsideration it may either drop the name of the person not found suitable by the president or reiterate its recommendation. In the later case the president is bound to accept the recommendation.

The constitution gives no indication of the procedure for the appointment of the Chief Justice. ... The Supreme Court has held that as a matter of rule the seniormost judge of the Supreme Court shall always be appointed as the Chief Justice of India if he is otherwise fit to be so appointed.

Clause (3) of [Article 124] lays down the qualifications of a judge of the Supreme Court. He must have been for at least five years a judge of High Court in India or an advocate of ten years' standing, or must be, in the opinion of the President, a distinguished jurist. ... In addition to these formal qualifications great emphasis has been given to other qualities of a judge such as rectitude, impartiality, independence, etc. to ensure independence and competence of the judiciary; great emphasis has been laid on the merit of the person to be appointed as judge.

A judge may resign his office by writing under his hand addressed to the President. He can also be removed from his office in accordance with the procedure laid down in clause (4) of [Article 124].

A judge of the Supreme Court can be removed by an order of the President on the ground of proved misbehavior or incapacity. But the President's power of removal is exercisable only after an address of each House of Parliament, supported by a majority of total membership of that House and a majority of not less than two-thirds of the members of that House presenting and voting, has been presented to the President in the same session for such removal. Such address can, however, be presented only after the allegations against a judge have been proved i.e. after they have been investigated and established by some impartial tribunal (**Singh 413-415**).

Is Indian judiciary a career judiciary or non-career judiciary? Why?

3.3.6 Appointment, Withdrawal and Removal of Judges in Ethiopia

3.3.6.1. Federal Judicial Administration Council

In Ethiopia, all the three branches of government participate in the appointment of judges to any Ethiopian court established by the constitution of FDRE. The judiciary has no say on the appointment of the president and vice president of the regional supreme courts or federal Supreme Court (Article 81(1) & (3)). The President and Vice President of the federal Supreme Court are appointed by the House of Peoples' Representatives upon recommendation of the Prime Minister. The presidents and vice presidents of the state supreme courts are appointed by respective state councils upon recommendation of the state chief executives.

What do you think would happen if all the candidates of the Prime Minister or chief executives are rejected by the House of Peoples' Representatives or state councils?

The final say upon the appointment of the presidents or vice presidents of supreme courts lies in the legislature. The Prime Minister or chief executives cannot appoint a person to judicial office if that person is found unfit for the position by the House of the Peoples' Representatives or state councils. Thus, to become president or vice president of the state supreme courts or federal Supreme Court, a person should obtain the support of the executive and the legislature.

Federal judges of any level except the President and Vice President of the Supreme Court are appointed by House of People's Representatives among the list submitted by the Prime Minister. This list contains candidates selected by federal Judicial Administration Council.

- ✓ Article 81(2) says that the Prime Minister submits the list to House of Peoples' Representatives. Does that mean the Prime Minister has no decision-making power in appointing ordinary federal judges?
- ✓ Can the prime minister leave out the name of one of the candidates that he considers unfit to be appointed as a judge to federal courts?
- ✓ Why the Constitution uses different terms "recommendation" and "submit"?
- ✓ If the Prime Minister has no decision-making power, why the federal Judicial Administration Council does not submit the list to The House of Peoples' Representatives by itself?
- ✓ Is there a discrepancy between the Amharic and English version of Article 81(2)?
- ✓ If there is a discrepancy which version is more logical?

State executives are less involved in judicial appointment when compared with federal government. In federal government, the Prime Minister is involved in the appointment of every federal judge. Chief executives of state can participate only in the appointment of presidents and vice-presidents of supreme courts of regional states. They have no decision making power over the appointment of the ordinary judges to courts of any level. Even they cannot appoint presidents of high courts.

All judges of the sate courts except presidents and vice-presidents of supreme courts are appointed by the state council upon recommendation of the state judicial administration council.

On recommending the state high court and supreme court judges to the state councils, the state judicial administration councils should obtain the views of the federal Judicial Administration Councils.

- ✓ Why the state judicial administration councils should obtain the view of federal Judicial Administration Councils?
- ✓ Does this contradict with the existence of two vertical separation of power?

The Federal judicial administration council consists of nine members. Three are representatives from House of Peoples' Representatives. The remaining six are from the federal courts. They are presidents of federal first instance court, high court and Supreme Court; two most senior judges one from Supreme Court and the other from high court; and the vice president of federal Supreme Court. The council is chaired by the president of the federal Supreme Court.

The council is mandated to select candidate-judges; issue Disciplinary and Code of Conduct Rules for federal judges; decide on the transfer, salary, allowance, promotion, medical benefits and placement of federal judges; forward opinions to state judicial administration councils; and determine disciplinary matters (Article 5 of proclamation No. 24/1996).

3.3.6.2 Criteria for Judicial Appointment

According to Article 8 of proclamation No. 24/1996 (Federal Judicial Administration Commission Establishment Proclamation), the federal Judicial Administration Council recommends a person for a judgeship when such person fulfils the following criteria.

1. Nationality

Foreign nationals cannot be a federal judge. The knowledge of the culture and language in addition to the training in Ethiopia cannot qualify a person to be a judge. For example, a French National who graduated in bachelor of laws from Haramaya University and speaks Amharic fluently cannot be a judge. A person is an Ethiopian when "both or either parent is Ethiopian" (Article 6 of the Constitution).

2. Loyalty to the Constitution

To be elected as a federal judge a person should be loyal to the constitution of the Federal Democratic Republic of Ethiopia. A person is loyal to the constitution when he/she respects and protects the constitution. For example, a person who tries to over turn by force organs established by the constitution is not regarded as loyal to the constitution.

3. Legal Training or Legal Skills

Graduation from universities or colleges is not a prerequisite to be eligible for a judgeship. The acquisition of adequate legal skills suffices to become a judge. These legal skills can be obtained without attending law schools through experience in court.

4. Diligence, Sense of Justice and Good Conduct

A diligent person carries out his/her duties carefully by paying attention to every detail. A reckless person would not be recommended for judgeship by the judicial administration council. Persons should be fair to others when they make decision in their every day's life. Persons who are unjust in the decision they make as an individual cannot be recommended for the position. To be recommended for a judgeship a person should have a good conduct. A person is of a good conduct when he/she has habits that are appreciated by the community. For example, habitual drunkard may not be considered as having a good conduct. Similarly, a person who resorts to fraud, forgery of document etc. cannot be regarded as having a good conduct.

5. Consent

Consent of a person is necessary. If a person does not like to become a judge, the federal judicial administration council should not recommend him/her to the office of a judge. A person has no duty to assume judicial office.

6. Age

A person should attain an age of 25 year to be a judge. A person reaches the age of majority at eighteen. They are considered capable of making juridical acts at this age. Article 8 of

proclamation No 24/1996 requires seven additional years after the age of majority to become a judge.

- ✓ Why a person between eighteen and twenty-five cannot be a judge?
- ✓ Is there scientific proof that shows persons in this age group cannot make decision or appropriate decision?

A member of the Judicial Administration Council nominates a person that he or she thinks fit for the office of a judge. That is, any member of the council gives the name(s) of persons that, in his or her opinion, qualified to be a judge. As a result, the council will have lists of persons among whom judges are going to be selected. The member of the council who nominates the candidate judge(s) has no duty to provide the details of the candidate judge that he/she nominates.

In the next step, the chairperson of the council provides the profile of the nominees to the council. He/she provides the council with such details of the nominee as the level of education, publication, work experience, character, nationality, etc. of the nominee. Based upon these details provided by the chairperson, the council chooses the candidate-judges that it thinks is qualified for the position. It leaves out some whom it thinks less qualified.

After the selection by the council, the chairperson of the council presents the selected candidate-judges to the prime minister. The prime minister may leave out some or recommend all candidate-judges for appointment to the House of Peoples' Representatives. The recommendation of the council is not binding upon the prime minister. The prime minister has the discretion to reject all the candidate-judges.

Finally, the House of Peoples' Representatives appoints the judges by the majority vote. The House can reject all the candidate-judges or only leave out some. The House has no constitutional duty to appoint any body that is recommended by the prime minister.

3.3.6.4 Withdrawal and Removal of Judges

Judges should withdraw from the case when the grounds provided under article 27 of proclamation No.25/1996 are fulfilled (Article 24 Federal Code of Judicial Conduct). See impartiality under section 2.3.

The executive plays important role in the appointment of the federal judges. However, the executive has no role in removing judges from their office. Article 79 of the constitution lays down that judges can be removed from their office only upon decision of the judicial administration council and approval of that decision by the legislature, state councils or House of Peoples' Representatives. Even the legislature can remove the judges only on certain grounds.

These grounds are:

- a. Violation of Disciplinary Rules
- b. Gross incompetence or inefficiency
- c. Incapacity to carryout judicial duties due to illness

Thus, no judge can be removed from his office before retirement on any other grounds. But a judge can resign upon giving two months notice (Article 9 of proclamation No. 24/1996).

3.4 Factors that Influence Ethical Requirement of Judges

Among the multitude of factors affecting the ethical conduct of judges note worthy are remuneration, resource of the court, workload and off bench activities. A meager remuneration may expose judges to violation of judicial discipline. Such remuneration may tempt judges to seek bribes from the litigants or their advocates. Out of the financial constraints judges may sell justice to the citizens. Meager salary may also lead judges to conduct other business to supplement their earnings. They may engage themselves in a part time business and such business may affect the official duties of judges by taking much of the judge's time and energy. Thus, meager remuneration for judges has a bearing on the ethical independence of judges.

The scarcity of resources in the court affects the ethical conduct of judges. These resources could be human or material resources. The availability of resources such as computers, books in the

library and other necessary supplies increases the judicial performance. For example, a judge should be competent by updating his knowledge of the law. But if those laws are not available for that judge or books are not available it is very difficult for a judge to keep in touch with the dynamism in the law.

The work load of judges affects their ethical duty to be diligent. It is very difficult to decide the matters thoroughly. A judge with overload cannot pay attention to the details of the matter. To render a well considered decision every judge needs time for research and contemplation. It is naïve to expect a sober decision from a busy judge. Thus, failure to make research may result in egregious legal error which subject a judge to disciplinary measures.

Extra judicial activities may bring a judge in conflict of interest with the parties to the case or their advocates. As a result, a judge may be regarded as partial even though he/she did not know the existence of such relationship did not consider as ground of his recusal.

3.5 Liability (Responsibility) for Breach of Rules of Conduct

Violation of code of judicial conduct results in disciplinary measures. A conduct that results in violation of code of judicial conduct may also subject a particular judge to civil and/or criminal liability. For example, accepting a bribe results in both disciplinary measures and criminal punishment because bribery is prohibited under federal Code of Judicial Conduct and the Criminal Code.

3.5.1 Disciplining Agency

Federal Judicial Administration Council is vested with the power of disciplining judges that violate the Federal Code of Judicial Conduct. Ordinary courts do not try disciplinary matters. Even they have no appellate jurisdiction or power of review over disciplinary matters.

3.5.2 Disciplinary Measures

The disciplinary measures to be imposed on a judge that violate federal judges Code of Judicial Conduct are provided under Article 10 of federal judges rules of disciplinary proceeding. They are arranged in ascending order from simple to serious penalty. They are:

- a) Oral warning
- b) Written warning
- c) Fine not exceeding three months salary
- d) Demotion of the post and cut in salary
- e) Removal from office

Warning is the least serious discipline. It does not result in loss of right. The main purpose of warning is to teach the judge that he should not repeat the conducts again. Warning can be public or private. Public warning is published in mass media or other means such as posters. Private warning will not be disclosed to the public through mass media or posters. The disciplinary rules of proceeding use oral and written warning. Oral warning is imposed on a judge for simple violation of the Code of Judicial Conduct. Written warning is imposed on a judge whose violation of the Code of Conduct is more serious than the violations that deserve oral warning.

Should oral or written warning be published in newspaper?

The rules of disciplinary proceedings are silent on such matter. It seems that the Judicial Administration Council has the power to publicize.

Fine is imposed for the breach of Code of Judicial Conduct that the Judicial Administration Council considers more serious than violations deserving warning. The maximum amount of fine depends on the salary of a judge who violates the Code of Judicial Conduct. For example, the maximum penalty for a judge whose salary is 2000 birr is 6000 birr. As a result, two judges who committed the same conduct in the same circumstance can pay different amount of fine if their salary differs. It could be said that the payment of fine is in accordance with the ability to pay. If

the fine is to be deducted from the salary of a judge it should not exceed one-third of the total payment (Article 404 of Civil Procedure Code).

Judicial Administration Council is not a court. So, Can it order the deduction of fine from the salary of a judge? Remember that even the salary of ordinary employee cannot be deducted except in accordance with the law, court order or consent of the employee.

The Judicial Administration Council demotes and cuts the salary of judges who commit more serious breach of Code of Judicial Conduct than the above cases. Demotion is simultaneous with cut in salary. Depending on the gravity of the breach the, demotion can be one grade down or several grades down. The maximum demotion makes a judge that violates the Code of Judicial Conduct equal in rank with a newly appointed judge. There is no limitation on the power of the Council respecting the amount of cut in salary. It seems that the cut in salary should not result in a remuneration which is less than the salary that corresponds to the least rank.

Can a judge be promoted to the next rank after demotion due to breach of Judicial Code of Conduct?

The most serious disciplinary measure is dismissal from judicial office. In this case the decision of Judicial Administration Council should be approved by the House of peoples' Representatives or state councils.

- ✓ Should the Council take into consideration the antecedents of judges when deciding the penalties for breach of Code of Conduct?
- ✓ What kinds of breach of Code of Conduct result in warning, fine, demotion or dismissal?

3.5.3 Procedures of Disciplinary Proceedings

The procedure of disciplining a judge is not an adversarial system. The Judicial Administration Council initiates the proceedings against the judge and decides it. Even when the petitioner is a third party the petitioner has no duty to prove the case against the judge.

1. Initiation

Any person can initiate a disciplinary proceeding against a judge. There is no requirement of vested interest in the matter unlike article 33(2) of Civil Procedure Code. Parties to the suit, advocates, judges, public prosecutors, witnesses, members of the public can be petitioner (Article 5(1) of Rules of Disciplinary proceeding). A member of the Council or the council itself can initiate the proceeding. A person who alleges the breach of code of conduct submits a written petition with the evidences to the Council directly or through the presidents of the courts (Article 6). Where the applications are submitted to the presidents of the court, the presidents forward the petition to the Council.

2. Investigation

The Judicial Administration Council will reject the petition and notifies the rejection to the petitioner if it finds the petition unfounded. However, it will direct the petition to the Judgment Review Service Department when there are no sufficient evidences [Article 7(a)]. The Judgment Review Department causes the petition and evidence to be served to the respondent. It receives the statements of defense from the respondent. It will submit report and explains to the Council after investigating documents, files and persons related with the matter (Article 9).

3. Hearing

The Council conducts hearing when it believes that petition submitted against a judge is proper. It also conducts hearing when the report of Judgment Review Department shows breach of Code of Judicial Conduct. It fixes a date for hearing and order the judge to appear on that date. It will warn, fine, demote or remove the judge from the office based on the gravity of the discipline if it finds that breach of Code of Judicial Conduct is committed by the judge.

Summary

Two methods are used to make judicial appointment and selection: career judicial selection and appointment and non-career judicial selection and appointment. While career judicial appointment promotes institutional independence of courts, the latter promotes judicial accountability. Judges are appointed by the legislature upon the recommendation of the executive among the lists provided by the judiciary in Ethiopia. Thus, all the three branches of government participate in judicial appointment in Ethiopia. Judges can be removed from their office when the decision of judicial administration council is approved by the legislature.

The process of judicial selection and appointment highly impacts judicial independence. The constitution of FDRE provides for institutional and decisional judicial independence. Judicial independence is not only the function of constitutional provisions respecting judicial appointment, removal and compensation. The ethical duties of judges and compliance with Code of Judicial Conduct plays important role in achieving decisional judicial independence. Thus, judges must avoid ex parte communications, donations and other problematic relations. Judicial independence should not be a mask to evade judicial accountability.

In performing their judicial duties, judges should be impartial, competent and diligent, courteous, treat all before them equally. Courts should maintain both objective and subjective aspects of impartiality. Judges upgrade their legal knowledge and skills, attend training and dispose of the case expeditiously. In extra-judicial activities judges should not carry out activities that are inconsistent with judicial activities. Judges are responsible for penalties ranging from oral warning to removal from office for breach of code of judicial conduct.

Review Questions

Part I: Multiple Choices

Choose the best answer.

1. If a judge convenes with one of the party to the case in his office, then
 - A. He violates his ethical duty to be independent
 - B. He violates his ethical duty to be impartial
 - C. He violates his ethical duty to be accountable
 - D. He violates his ethical duty to be competent

2. The purpose of objective impartiality is to protect
 - A. The parties to the case
 - B. The advocates representing the parties
 - C. Public confidence in the court
 - D. The rights of the third parties

3. Which one of the following does not affect judicial independence?
 - A. Subjecting a judge to a disciplinary measures for simple legal error
 - B. Responsible public criticism
 - C. Appointment of judges
 - D. Promotion of judges

4. A judge violates his duty to be competent and diligent
 - A. If he fails to maintain order and decorum of the court
 - B. If he fails to participate in training organized by the judiciary
 - C. If he comes late to his office
 - D. All of the above

5. If one of the parties to the case is relative of the judge presiding over the case, the presiding judge should _____.

- A. Decide the case impartially
- B. Recuse himself from the case
- C. Order the parties to file the case before other courts
- D. Require his relative to appear through an advocate

Part II: Problems

Solve the following Problems

1. Article 23 of Code of Judicial Conduct for federal judges prohibits judges from making statement or opinion to the media on a matter not finally decided. Does that mean the judges can make any statement to media or other persons regarding impending case? Why?
2. Assume that Anatoly is a federal high court judge in Dire Dawa. Assume also that Kebede was arrested as a suspect for committing rape whose victim died as a result of rape. Kebede was not charged. Meanwhile a reporter of certain news paper interviewed judge Anatoly. Is the statement of judge Anatoly to newspaper that he would punish Kebede with death penalty ethical? Why?
3. Can a high court judge make statement to the press about a matter pending and not finally decided before the first instance court? Why?
4. Mr. Naol is related to Ms. Asanty in the 7th degree. He is a judge of federal high court in Addis Ababa. Ms. Asanty sued Mr. Kebede for non-performance of contract in federal high court in Addis Ababa. The case was assigned to Mr. Naol. Should Mr. Naol recuse himself? Why?

5. Mr. A appointed Mr. B as an agent. B administered A's property for three years. Now, B is a judge of Federal first instance court in Dire Dawa. A sued Mr. C for damages in this court. Can Mr. B preside over this case?
6. Mr. Naol is a federal high court judge. He was present at the crime scene when Mr. Zelalem killed Mr. Abebe. Can Mr. Naol preside over the case between public prosecutor and Mr. Zelalem without violating his ethical duties?
7. After his graduation from the Faculty of Law of Haramaya University and serving as an assistant judge for one year, Dagnachew was appointed as a judge to Federal High court in Dire Dawa. He properly carries out his judicial duty.

The general manager of East Africa Bottling Share Company was impressed by the diligence of Dagnachew. The manager offered Dagnachew a part time position in a company as a legal advisor. The responsibilities attached to the position, according to the manager, include drafting of contract to be concluded between the company and third parties, rendering consultancy service, and preparing pleadings. But it does not include representation in the court of law.

- a) Should Dagnachew accept the offer? Why?
- b) Would your answer be different if the offerer is a Department of Law of Lucy College with a duty of lecturing courses in Law? Why?

Project Work 3.1

Conduct research through an interview, review of literature and other methodology and write a short essay on one of the following titles

- i. Transfer and promotion of judges
- ii. Transfer and promotion of federal judges in Ethiopia
- iii. Transfer and promotion of National Regional State Judges (choose one states from national regional states of Ethiopia e.g. Oromia, Afar etc.)
- iv. The impact of transfer and promotion of judges on judicial independence

The issues that you should address include but not limited to

- a) The procedure of promotion of judges
- b) The stages to which judges are promoted (from the lowest to the highest)[e.g. junior judge, senior judge etc. Can a judge be promoted from first instance court to high court or from high court to supreme court?]
- c) Criteria for promotion
- d) How salary of judge increases? (e.g. with increase in year of service)
- e) Transfer of judges from one court to another
- f) Can judges be transferred from state courts to federal courts?

CHAPTER FOUR

ADVOCATES' ETHICS

Introduction

The FDRE constitution guaranteed an accused person a fundamental right to be represented by legal counsel of his choice, and if he doesn't have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense (see Art. 20(5)). Similarly, prisoners and detainees have the right to be visited by their legal councils (see Art. 21) of the same constitution. All presupposes the existence or constitutional recognition of legal professionals, advocates. The Civil Code of the Empire of Ethiopia under article 2205(2) of TITLE XIV also recognizes this special type of agency relationship. The relationship in this context is client - advocate relationship. The next issue will be who is an advocate, a client and how client-advocacy relationship be established?

In a narrow sense an advocate is a person who speaks on behalf of other and advocacy service is speaking for others. The famous special dictionary, Black's law dictionary also defined it as a person who assists, defends, pleads or prosecutes for another. Even if the word speaking is narrow and doesn't involve all activities that the advocate does on behalf of another, it certainly implies some sort of representation. Except its broadness, the Black's law dictionary also implies the same. Therefore we can healthily deduce that advocacy is a special type of agency and an advocate is a special agent. Why special? This is because the issue involved is legal issues, and the agent is a lawyer who is acquainted with knowledge, skill and developed some sort of attitude in the field of law. The Federal Courts advocates licensing and registration proclamation No 1999/2000 under Art 2(2) provided the broadest and authoritative definition stating advocacy service means “ the preparation of contracts, memorandum of association, documents of amendment or dissolution of the same or documents to be adduced in court (case preparation), litigation before courts on behalf of third parties, and includes rendering legal consultancy services for consideration or with out consideration, or for direct or indirect future consideration (emphasis added). As to this definition, advocacy service is not only limited to activities that the

advocate do on behalf of his client in relation to 3rd parties; but also personal service to the client himself like legal consultancy. Moreover it doesn't limit advocacy service only to the institution of courts, but also it include legal professional activities like drafting of contractual and other documents; Regarding advocacy this proclamation under Sub 3 provided operational definition of advocate as a lawyer whose name is registered in the register in order to render advocacy service. This article opt to use a lawyer rather than defining an advocate in the strict sense of the term .Once again the phrase “whose name is registered in the register” implies not all lawyers but those who satisfy elements or requirements to be an advocate in Ethiopia. This is what we call eligibility which is provided under articles 4, 8,9and10 of the aforementioned proclamation.

This definition is so comprehensive and operational because on one hand the advocate must be a lawyer, a professional who is acquainted with at least basic knowledge and skill in the field of law; And on the other hand he must met some minimum requirements such as nationality, the suitability of his behavior for the proper administration of justice, being not convicted and sentenced in an offence manifesting his improper conduct... etc (see the articles mentioned here above.)

Having said this let us deal with the basic ethical requirement of advocates in different aspects such as with regard to the profession, his client, opponent, collogues, the court, community and justice system of the country as a whole.

Unit Objective

By the end of this unit students will be able to:

- discuss the pre conditions to be an advocate
- explain the meaning of an advocate and advocacy service
- Identify the types of advocacy service
- Identify basic ethical principles required of an advocate indifferent relations

4.1 The profession, the Justice System, Court and the Country

Being distinct from ordinary persons, even other professionals an advocate owes a number of ethical responsibilities unique to the profession, advocacy. He shall act in accordance with the rules of the professional conduct, including honor, dignity & integrity. The first and for most duty is to uphold respect for the profession in general, law; For instance, he must not utter words or publish writings contrary to recognized laws of the country and preemptory norms of the world, nor incite any one including his client to violate the law and the jus cogens, but he may for good reason and by legitimate means, criticize any provision of the law, contest the application thereof or seek to have it amended, even repealed. Secondly, he has the duty to serve justice, Moreover; he has to cooperate for justice by showing special endeavor for the administration of the justice machinery. Especially he has to support public authorities mainly judges. He may not act in a manner which is detrimental to the administration of justice in particular he may not make a public statement which may prejudice a case pending before a court and also he must not foment dissension nor promote disputes by searching for flaws imperfections or shortcomings in titles or documents of private nature and bring them to the attention of others for the purpose of obtaining for himself or any other person a contract to institute proceedings or to benefit them from. The advocate may undertake the defense of the client no matter what his personal opinion may be on the client's guilt or liability (decline of advocacy service)(see Art.5 of the federal court advocates' code of conduct, council of ministers regulation No.57/99).In a similar fashion he has to avoid any procedure of a purely dilatory nature and cooperate with other advocates to ensure the proper administration of justice .Moreover he must when his presence is required attend or be represented before the court in a case he has undertaken unless he is prevented by force majeure and has given the earliest possible notice of his projected absence to the client the court and the opposite party.

In addition he has to provide community service. The good example of these is pro bono public service. Art 20(5) of the FRDE constitution states that "accused persons have the right to be represented by legal council of their choice, and if they don't have sufficient means to pay for it and miscarriage of justice would result, to be provided with legal representation at state expense." Similarly the federal court advocates' code of conduct, council of ministers regulation

No.57/99). Provides as any advocate shall render at least 50 hours of legal service, in a year, free of charge or upon minimum payment. The service shall be rendered to:

- 1) Persons who can not afford to pay;
- 2) Charity organizations, civic organizations, community institutions;
- 3) Persons to whom courts requests legal services;
- 4) Communities and institutions that work for improving the law, the legal profession and the justice system.

One of the major purposes of advocacy service is to assist (support) the justice machinery. The presumption is the probability of occurrences of miss carriage of justice is high in the absence of legal assistance (advocacy). Advocacy service is essential to save innocent and give deviants what they deserve or place in a disadvantageous position of what so ever. It enables to minimize the occurrence of injustice that may result from lay man or weak parties inability in the production of pieces of evidence and persuasion, the Amharic proverb,(Kayayaz yikededal ,kanegager yiferedal) is pertinent here. Accordingly advocacy service may balance the imbalance of litigants in the trial process and there by play a role in the effort of achieving justice. Generally he has to assist but not create problem. An advocate shall have the responsibility to assist the organs of administration of justice in the effort to promote respect for the law and the attainment of justice. He has to promote educational and information means pertinent to the field in which he practices. In addition to this he has to contribute to the development of his profession as far as he can, through exchange of his knowledge and experience with other advocates, student and informed person or by his participation in courses and trainings, continuous legal professional development programs.

4.2 Ethical Requirements of Advocates in relation to their Clients

At the beginning of this chapter we have attempted to define who an advocate is and what an advocacy service is .What is left here is who is a client? And how advocate-client relation be established? Accordingly a client maybe defined it as a person using the service of a professional, lawyer (advocate) in this context. Black's law dictionary also defined as a person or an entity that employs a professional for advice or help in that professional's line of work .The

relationship is established when a person manifests to an **advocate** his intent that the latter provides legal services for him; and the advocate manifests to the client to do the same. The other issue commonly raised in the client –advocate relationship is the repetition of the contact. Even if some legal scholars argue that to attain the status of a client or to call the bond client-lawyer relationship there should be a long term or repeated relation; but there seems a common understanding that even a single contact is sufficient and the practice substantiate this position. Once the relationship is established there is an old and of course true saying that “a client is a king”, which connotes that clients deserve due respect, their interest must be preserved and protected. This relationship of the advocate is the most sensitive relationship of all relations .Most clients are laymen, emotional, unfamiliar with the justice system and usually come to get professional service, advice, and or support including representation. Thus a high degree of tolerance, farsightedness and conscious understanding is expected from this advocate .He has to act as a doctor who treats his patient humanly and kindly .In such away he has to listen all the ideas of his client and diagnose the case inline with the pertinent provisions of the law, asses probative value of pieces of evidence of the case ,asses the probability of win or loss; and suggest ADR whenever he thinks that the desired result can be obtained if his client’s case is resolved by amicable settlement rather than judicial one. Generally, a client usually seeks legal assistance to deal with unfamiliar circumstances and relationships. The client’s position is ordinarily one of need and frequently one of adversity; the client’s problem may involve significant personal and property interests, individual freedom and responsibility, or even life itself. To obtain effective advice and assistance in such matters, the client must place trust in the advocate. To provide such advice and assistance the lawyer must be skillful, diligent, and trustworthy. At the same time, the advocate must be faithful to the requirements of law and the rules of professional Conduct. These responsibilities commence when a lawyer is asked to assist a client. They should continue in all the functions that a lawyer may perform on behalf of a client

4.2.1 Diligent and Competent Representation

Diligence

Diligence implies being careful; which usually involves the use of a lot of effort to do so. An advocate shall act with reasonable diligence and promptness in representing a client. He should

pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to him, and may take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. An advocate should act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf. However, he is not bound to press for every advantage that might be realized for a client. He has professional discretion in determining the means by which a matter should be pursued. His workload should be controlled so that each matter can be handled adequately. Perhaps no professional shortcoming is more widely resented than procrastination. A client's interests often can be adversely affected by the passage of time or the change of conditions; in extreme instances, as when an advocate overlooks a period of limitations, the client's legal position may be destroyed. Even when the client's interests are not affected in substance, procedural impacts such as, unreasonable delay can cause a client needless anxiety and undermine confidence in the lawyer's trustworthiness. Unless the relationship is terminated he should carry through to conclusion all matters undertaken for a client. If his employment is limited to a specific matter, the relationship terminates when the matter has been resolved. If he has served a client over a substantial period in a variety of matters, the client sometimes may assume that he will continue to serve on a continuing basis unless the he gives notice of withdrawal. Doubt about whether a client-advocate relationship still exists should be clarified by the later, preferably in writing, so that the former will not mistakenly suppose the later is looking after the client's affairs when the advocate has ceased to do so. For example, if an advocate has handled a judicial or administrative proceeding that produced a result adverse to the client but has not been specifically instructed concerning pursuit of an appeal, he should advise the client of the possibility of appeal before relinquishing responsibility of the matter.

Competence

One of the ethical requirement of an advocate in relation to his client as lawyer is to provide competent service. By competent representation we mean the ability of the advocate to discharge his responsibility towards his client in a reasonably well manner and generally competent representation requires the legal knowledge, skill, attitude, thoroughness and preparation reasonably necessary for the representation. In determining whether an advocate employs the required (requisite) knowledge and skill in a particular matter, relevant factors include the

relative complexity and specialized nature of the matter, the advocate's general experience, and training in the field in question, the preparation and study the advocate is able to give the matter and whether it is feasible to refer the matter to, or associate or consult with, advocate of established competence in the field in question. In many instances, the required proficiency is that of a general practitioner. Expertise in a particular field of law may be required in some circumstances.

An advocate need not necessarily have special training or prior experience to handle legal problems of a type with which he is unfamiliar. A newly admitted advocate can be as competent as a practitioner with long experience. Some important legal skills, such as the analysis of cases, the evaluation of evidence and legal drafting are required in all legal problems. Perhaps, the most fundamental legal skill consists of determining what kind of legal problems a situation may involve, a skill that necessarily transcends any particular specialized knowledge. An advocate may accept representation where the required (requisite) level of competence can be achieved by reasonable preparation. This applies as well to an advocate who is appointed as counsel for an unrepresented person.

Thoroughness and Preparation

Competent handling of a particular matter includes inquiry into and analysis of the factual and legal elements of the problem, and use of methods and procedures meeting the standards of competent practitioners. It also includes adequate preparation. The required attention and preparation are determined in part by what is at stake; major litigation and complex transactions ordinarily require more elaborate treatment than matters of lesser consequence.

Maintaining Competence

To maintain the requisite knowledge and skill, an advocate should engage in continuing study and legal professional development programs. If a system of peer review has been established, the advocate should consider making use of it in appropriate circumstances. He shall not handle a matter which he knows or should know that he is not competent to handle, without associating himself with another advocate who is competent to handle it being prepared adequately in the circumstances.

Communication

Lack of openness is one of the major sources of misunderstanding in the advocate –client relationship. Thus, the advocate should be transparent to his client as much as practically possible being confident that they owe duty of confidentiality that information will be maintained secretly. Accordingly, he shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. He shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. The client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued; to the extent the client is willing and able to do so. For example, an advocate negotiating on behalf of a client should provide the client with facts relevant to the matter, inform the client of communications from another party and take other reasonable steps that permit the client to make a decision regarding a serious offer from another party. An advocate who receives from opposing counsel an offer of settlement in a civil controversy or a proffered plea bargain in a criminal case should promptly inform the client of its substance unless prior discussions with the client have left it clear that the proposal will be unacceptable. Even when a client delegates authority to the advocate, the client should be kept advised of the status of the matter. Adequacy of communication depends in part on the kind of advice or assistance involved. For example, in negotiations where there is time to explain a proposal, the advocate should review all important provisions with the client before proceeding an agreement. In litigation a lawyer should explain the general strategy and prospects of success and ordinarily should consult the client on tactics that might injure or coerce others. On the other hand, an advocate ordinarily cannot be expected to describe trial or negotiation strategy in detail. The guiding principle is that he should fulfill reasonable client expectations for information consistent with the duty to act in the client’s best interests, and the client’s overall requirements as to the character of representation.

Ordinarily, the information to be provided is appropriate for a client who is a comprehending and responsible adult. However, fully informing the client according to this standard may be impracticable, for example, where the client is a child or suffers from mental disability. When

the client is an organization or group, it is often impossible or inappropriate to inform every one of its members about its legal affairs; ordinarily, the advocate should address communications to the appropriate officials to the organization. Where many routine matters are involved, a system of limited or occasional reporting may be arranged with the client. Practical exigency may also require an advocate to act for a client without prior consultation.

Withholding Information

In some circumstances, an advocate may be justified in delaying transmission of information when the client would be likely to react imprudently to an immediate communication. For instance, he might withhold a psychiatric diagnosis of a client when the examining psychiatrist indicates that disclosure would harm the client. An advocate may not withhold information to serve the lawyer's own interest or convenience. Rules or court orders governing litigation may provide that information supplied to a lawyer may not be disclosed to the client.

4.2.2 Duty of confidentiality

Confidential client information consists of information about a client or a client's matter contained in oral communications, documents, or other forms of communications, other than information that is generally known, if the lawyer or the lawyer's agent learns or comes into possession of the information. During the course of representing a client or consulting with a prospective client, regardless of the relationship of the information to the matter involved in the representation or consultation; or at a time before a representation begins or after it ends, the information concerns a specific client (other than a prospective client whom the lawyer never represents as a client), and the information is entrusted to the lawyer under circumstances reasonably indicating that the lawyer is to employ and safeguard the information on behalf of the client whom the information concerns.

As we have stated here in above the advocate must be transparent .Confidentiality is a key to be transparent. Unless these parties owe duty of confidentiality each other they feel fear of exposition of private in formation and refrain from telling the whole truth. The observance of the ethical obligation of an advocate to hold confidential information of the client not only facilitates

the full development of facts essential to proper representation of the client but also encourages people to seek early legal assistance. In turn this affects the effectiveness of the relationship greatly. A fundamental principle in the client-lawyer relationship is that the advocate maintains confidentiality of information relating to the representation. The client is there by encouraged to communicate fully and frankly with the advocate even as to embarrassing or legally damaging subject matter. The principle of confidentiality is given effect in two related bodies of law, the attorney-client privilege (which includes the work product doctrine) in the law of evidence and the rule of confidentiality established in professional ethics. The attorney-client privilege applies in judicial and other proceedings in which a n advocate may be called as a witness or other wise required to product evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the advocate through compulsion of law. The confidentiality rule applies not merely to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source maybe. An advocate may not disclose such information except as authorized or required by the rules of Professional Conduct or other law. The requirement of maintaining confidentiality of information relating to representation applies to government lawyers who may disagree with the policy and goals that their representation is designed to advance.

Generally an advocate shall not reveal information relating to representation of a client .And in many states legal systems including ours this duty continues even after the end of client-advocate relationship, pursuant to article 10(3) of the federal court advocates' code of conduct, council of ministers regulation No.57/99) which states that the obligation of professional confidentiality of an advocate may not cease because of termination of the contract with the client. But this duty of confidentiality is not absolute, i.e. subject to an exception. The following are inter alia to the exceptions:

1. If it is common knowledge
2. An advocate may reveal such information to the extent the lawyer reasonably believes it necessary:
3. With respect to the relationship between client and lawyer, when: the client consents after he is adequately informed concerning the use or disclosure:

4. With respect to the interests of third persons, when the lawyer acts with actual or apparent authority
5. To prevent the client from committing a criminal act that the advocate believes is likely to result in imminent death or substantial bodily harm
6. To establish a claim or defense on behalf of the advocate in a controversy between him and the client, to establish a defense to a criminal charge or civil claim against the advocate based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client;
7. Authorized disclosure, a lawyer is impliedly authorized to make disclosures about a client when appropriate in carrying out the representation, except to the extent that the client's instructions or special circumstances limit that authority. In litigation, for example, advocate may disclose information by admitting a fact that cannot properly be disputed, or in negotiation by making a disclosure that facilitates a satisfactory conclusion.
8. Disclosure Adverse to Client:
 - a) The confidentiality rule is subject to limited exceptions. In becoming privy to information about a client, a lawyer may foresee that the client intends serious harm to another person. However, to the extent a lawyer is required or permitted to disclose a client's purposes, the client will be inhibited from revealing facts which would enable the lawyer to counsel against a wrongful course of action. The public is better protected if full and open communication by the client is encouraged than if it is inhibited.
 - b) Several situations must be distinguished. First, the lawyer may not counsel or assist a client in conduct that is criminal or fraudulent. See Rule 1.2 (d). Similarly, a lawyer has a duty under Rule 3.3 (a) (4) not to use false evidence. This duty is essentially a special instance of the duty prescribed in Rule 1.2(d) to avoid assisting a client in criminal or fraudulent conduct.
 - c) Secondly, the advocate may have been innocently involved in past conduct by the client that was criminal or fraudulent. In such a situation the lawyer has not violated the rule of conduct because to "counsel or assist" criminal or fraudulent conduct requires knowing that the conduct is of that character.

- d) Thirdly, the lawyer may learn that a client intends prospective conduct that is criminal and likely to result in imminent death or substantial bodily harm. As in such away the lawyer has professional discretion to reveal information in order to prevent such consequences. The lawyer may make a disclosure in order to prevent homicide or serious bodily injury which the lawyer reasonably believes is intended by a client. It is very difficult for a lawyer to “know” when such a heinous purpose will actually be carried out, for the client may have a change of mind.

9) Using or Disclosing Information to Advance Client Interests or for Purposes of Law

Unless the client has directed otherwise, a lawyer may use or disclose confidential client information: When the lawyer reasonably believes it will advance the interests of the client in the representation, for example:

- a. By providing it in confidence to colleagues of the lawyer such as employees, other agents, contractors, and other persons who aid the lawyer in representing the client;
- b. By presenting evidence or argument in proceedings; or
- c. By disclosing confidential client information to other persons; or when the lawyer reasonably believes it is appropriate and not inconsistent with the client’s interests to provide such information in confidence to colleagues of the lawyer such as employees, other agents, contractors, and other persons aiding the lawyer in facilitating the business affairs and law practice of the lawyer’s firm and for purposes of professional development.

10) Using or Disclosing Information When Required by Law

A lawyer may use or disclose confidential client information when required by law, for example when ordered to do so by a tribunal, if the lawyer takes reasonably appropriate steps to asset that the information is privileged or otherwise protected against disclosure.

11) Using or Disclosing Information in Lawyer’s Self-Defense

A lawyer may use or disclose confidential client information to the extent that the lawyer reasonably believes necessary in order to defend the lawyer against a charge by any person that the lawyer or a person for whose conduct the lawyer is responsible acted

wrongfully during the course of representing the client whose information the lawyer uses or discloses.

12) Using or Disclosing Information to Prevent Death or Serious Bodily Injury

Following an attempt by the lawyer, if feasible, to dissuade the client, a lawyer may use or disclose confidential information if and to the extent the lawyer reasonably believes:

- 1) The client intends to commit a crime or fraud that threatens to cause death or serious bodily injury and
- 2) The lawyer's use or disclosure is:
 - a. Reasonably appropriate to prevent the act; and
 - b. Necessary in view of the imminence of death or injury.

13) Using or Disclosing Information to Prevent Substantial Financial Loss

Following an attempt by the lawyer, if feasible, to dissuade the client. A lawyer may use or disclose confidential information if and to the extent the lawyer reasonably believes:

1. The client intends to commit a crime a crime or fraud that threatens to cause substantial financial loss;
2. The lawyer's services were employed in the client's course of conduct and the loss is likely to occur if the lawyer takes no action; and
3. The lawyer's use or disclosure is:
 - a. Reasonably appropriate to prevent the act; and
 - b. Necessary in view of the imminence of the substantial financial loss.

4.2.3 Contract of Advocacy

To begin from the bigger truck Contract of advocacy is regulated by general principle of the law of contract especially law of agency .The major area of emphasis and frequently encountered source of conflict in the practical world are issues related to scope of representation and fee agreement. Let us deal with each separately:

Scope of Representation

Both an advocate and client have authority and responsibility in the objectives and means of representation. The client has ultimate authority to determine the purposes to be served by legal

representation, within the limits imposed by law and the lawyer's professional obligations. Within those limits, a client also has a right to consult with the advocate about the means to be used in pursuing those objectives. At the same time, an advocate is not required to pursue objectives or employ means simply because a client wishes to be done. Even if he acted within his scope of power the advocate is responsible for violation of the codes of conduct if he carried out the misdeeds of his client. A clear distinction between objectives and means sometimes cannot be drawn, and in many cases the client- advocate relationship partakes of a joint undertaking. In questions of means, the advocate should assume responsibility for technical and legal tactical issues, but should defer to the client regarding such questions as the expense to be incurred and concern for third persons who might be adversely affected. The law defining the advocate's scope of authority in litigation varies among jurisdictions.

Moreover, legal representation should not be denied to people who are unable to afford legal services, or whose cause is controversial or the subject of popular disapproval. By the same token, representing a client does not constitute approval of the client's views or activities. The objectives or scope of services provided by a lawyer may be limited by agreement with the client or by the terms under which the lawyer's services are made available to the client. For example, a retainer may be for a specifically defined purpose. Representation provided through a legal aid agency may be subject to limitations on the types of cases the agency handles. When a lawyer has been retained by an insurer to represent an insured, the representation may be limited to matters related to the insurance coverage. The terms upon which representation is undertaken may exclude specific objectives or means. Such limitations may exclude objectives or means that the lawyer regards as repugnant or imprudent.

An agreement concerning the scope of representation must accord with the rules of Professional Conduct and other law. Thus, the client may not be asked to agree to representation so limited in scope as to violate codes of conduct or to surrender the right to terminate the lawyer's services or the right to settle litigation that the lawyer might wish to continue.

Criminal, Fraudulent and Prohibited Transactions (agreement)

An advocate is required to give an honest opinion about the actual consequences that appear likely to result from a client's conduct. The fact that a client uses advice in a course of action that is criminal or fraudulent does not, of itself, make an advocate **a party** to the course of action. However, an advocate may not knowingly assist a client in criminal or fraudulent conduct. There is a critical distinction between presenting an analysis of legal aspects of questionable conduct and recommending the means by which a crime or fraud might be committed with impunity. When the client's course of action has already begun and is continuing, the advocate's responsibility is especially delicate. He is not permitted to reveal the client's wrongdoing. However, he is required to avoid furthering the purpose, for example, by suggesting how it might be concealed. A lawyer who may not continue assisting a client in conduct that the advocate originally supposes is legally proper but then discovers is criminal or fraudulent. Withdrawal from the representation, therefore, may be required. Where the client is a fiduciary, the advocate may be charged with special obligations in dealings with a beneficiary. Hence, an advocate should not participate in a sham transaction; for example, a transaction to effectuate criminal or fraudulent acts or evasion of any liability including escape of tax liability.

An advocate shall abide by a client's decisions concerning the objectives of representation and shall consult with the client as to the means by which they are to be pursued. He shall abide by a client's decision whether to accept an offer of settlement of a matter. **In determining the scope of representation the advocate should play great role he shouldn't assume unlawful representation.** For instance, he shall not counsel a client to engage, or assist in conduct that he knows is criminal or fraudulent, but he may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law. When he knows that a client expects assistance not permitted by the rules of professional conduct or other law, the advocate shall consult with the client regarding the relevant limitations on the lawyer's conduct.

Fee Agreement

With regard to fee agreement the civil code in dealing with remuneration adopt the principle that remuneration is contractual. But this is not without exception. Both the principle and the

exceptions are stated as follows: “The agent shall be entitled to the remuneration fixed in the contract; in the absence of stipulation in the contract, the agent shall not be entitled to remuneration, unless he carried out the agency within the scope of his professional duties ...”(see Art.2219&2220Civ.c).The code of conduct for advocates also provides that advocates should charge and accept fair, reasonable and legal fees with in the maximum limit (scale) in liquidated claims and reasonable contingent fees. The fees are fair and reasonable if they are warranted by the circumstances and correspond to the professional services rendered. In determining the amount of fees, the advocate must in particular take the following factors in to account:

- (a) the experience, reputation, and ability of the lawyer or lawyers performing the services;
- (b) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (c) the difficulty of the question involved
- (d) the importance of the matter
- (e) the responsibility assumed;
- (f) the performance of unusual professional services or professional services requiring exceptional competence or celerity;
- (g) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (h) the fee customarily charged in the locality for similar legal services;
- (i) the amount involved and the results obtained
- (j) the judicial and extrajudicial fees fixed in the tariffs.
- (k) the time limitations imposed by the client or by the circumstances;
- (l) the nature and length of the professional relationship with the client; and
- m) Whether the fee is fixed or contingent.

Generally the advocate must avoid all methods and attitudes likely to give to his profession a profit-seeking or commercial character. An advocate shall, before agreeing with the client to provide professional services, ensure that the latter has all useful information regarding the nature and financial terms of the services and obtain his consent there to, except where he may

reasonably assume that the client is already informed there of. An advocate who practices within a partnership or joint-stock company shall ensure that the fees and costs of professional services rendered by advocates are always indicated separately on every invoice or statement of fees that the partnership or joint-stock company sends the client, except where a lump-sum payment has been **agreed** upon in writing with client. However, in the latter case, the statement or invoice shall describe the professional services rendered by the advocate.

An advocate shall provide the client with all explanations necessary to the understanding of the invoice or statement of fees and the terms and conditions of payment, except where a written agreement has been entered into with the client to receive a lump-sum payment or where he may reasonably assume that the client is already informed there of. The advocate may not conclude an **agreement** with the client to receive or accept a salary from the latter in surrendering to him the fees to which he could be entitled against the opposite party. Other than legal interest, the only interest an advocate may collect on outstanding accounts is interest upon which he has agreed with the client in writing. The interest thus charged shall be the legal rate fixed by law; for instance Art.1751 Civ.c or at a reasonable rate.

When an advocate engages in his professional activities within a joint-stock company set up for the purpose of such activities, the fees and costs relating to the professional services rendered by him within and on behalf of such joint-stock company shall belong to such joint-stock company, unless it is agreed otherwise. The advocate must be assured that the client is informed of the extrajudicial fees, commissions or costs paid to him by a third party. In any matter in which an advocate extrajudicial fees, he shall inform the client that judicial fees may be granted by a court and enter into an agreement specifying the manner in which they are to be considered in fixing the cost of the professional services.

When the advocate has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to

determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

Basis or Rate of Fee

When the advocate has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee. In a new client- advocate relationship, however, an understanding as to the fee should be promptly established. It is not necessary to recite all the factors that underlie the basis of the fee, but only those that are directly involved in its computation. It is sufficient, for example, to state that the basic rate is an hourly charge or a fixed amount or an estimated amount, or to identify the factors that may be taken into account in finally amount, may be taken into account in finally fixing the fee,. When developments occur during the representations that render an earlier estimate substantially inaccurate, a revised estimate should be provided to the client. A written statement concerning the fee reduces the possibility of misunderstanding. Furnishing the client with a simple memorandum or a copy of the advocate's customary fee schedule is sufficient if the basis or rate of the fee is set forth.

Terms of Payment

An advocate may require advance payment of a fee, but is obliged to return any unearned portion. He may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to the pertinent rules of conduct. However, a fee paid in property instead of money may be subject to special scrutiny because it involves questions concerning both the value of the services and the advocate's special knowledge of the value of the property. An agreement may not be made whose terms might induce the advocate improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, an advocate should not enter into an agreement where by services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably

will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. An advocate should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures. When there is doubt whether a contingent fee is consistent with the client's best interest, the advocate should offer the client alternative bases for the fee and explain their implications. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage.

4.2.4 Conflict of Interest in General

An advocate shall not represent a client if the representation of the client will be directly adverse to another client, unless:

1. he reasonably believes the representation will not adversely affect the relationship with the other client; and
2. each client consents after consultation

An advocate shall not represent a client if the representation of that client may be materially limited by the former's responsibilities to another client or to a third person, or by the advocate's own interests.

Loyalty to a Client

Loyalty is an essential element in the advocate's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. The advocate should adopt reasonable procedures, appropriate for the size and type of firm and practice, to determine in both litigation and non-litigation matters the parties and issues involved and to determine whether there are actual or potential conflicts of interest.

If such a conflict arises after representation has been undertaken, the advocate should withdraw from the representation. Where more than one client is involved and the advocate withdraws

because a conflict arises after representation, whether he/she may continue to represent any of the clients may be determined by the pertinent rules of conduct. As a general proposition loyalty to a client prohibits undertaking representation directly adverse to that client without that client's consent. The general rule is that an advocate ordinarily may not act as advocate against a person he represents in some other matter, even if it is wholly unrelated. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only generally adverse, such as competing economic enterprises, does not require consent of the respective clients. Loyalty to a client is also impaired when an advocate cannot consider, recommend or carry out an appropriate course of action for the client because of the advocates's other responsibilities or interests. The conflict in effect forecloses alternatives that would otherwise be available to the client. A possible conflict does not itself preclude the representation. The critical questions are the likelihood that a conflict will eventuate and, if it does, whether it will materially interfere with the advocate's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client. Consideration should be given to whether the client wishes to accommodate the other interest involved.

A client may consent to representation notwithstanding a conflict exists. However, with respect to representation directly adverse to a client, and with respect to material limitations on representation of a client, when a disinterested advocate would conclude that the client should not agree to the representation under the circumstances, the lawyer involved cannot properly ask for such agreement or provide representation on the basis of the client's consent. When more than one client is involved, the question of conflict must be resolved as to each client. Moreover, there may be circumstances where it is impossible to make the disclosure necessary to obtain consent. For example, when the advocate represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent.

Advocate's Interests

The advocate's own interests should not be permitted to have adverse effect on representation of a client. For example, his need for income should not lead the advocate to undertake matters that

cannot be handled competently and at a reasonable fee. If the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for him to give a client detached advice. An advocate may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the advocate has an undisclosed interest.

Conflicts in Litigation

A number of rules of conducts prohibit representation of opposing parties in litigation. Simultaneous representation of parties, whose interests in litigation may conflict, such as co-plaintiffs or co-defendants. An impermissible conflict may exist by reason of substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. Such conflicts can arise in criminal cases as well as civil ones. The potential for conflict of interest in representing multiple defendants in a criminal case is so grave that ordinarily an advocate should decline to represent more than one codefendant. On the other hand, common representation of persons having similar interests is proper if the risk of adverse effect is minimal. Ordinarily, an advocate may not act as advocate against a client he represents in some other matter, even if the other matter is wholly unrelated. However, there are circumstances in which an advocate may act as advocate against a client. For example, an advocate representing an enterprise with diverse operations may accept employment as an advocate against the enterprise in an unrelated matter if doing so will not adversely affect the lawyer's relationship with the enterprise or conduct of the suit and if both clients consent upon consultation. By the same token, government lawyers in some circumstances may represent government employees in proceedings in which a government agency is the opposing party. The propriety of concurrent representation can depend on the nature of the litigation. For example, a suit charging fraud entails conflict to a degree not involved in a suit for a declaratory judgment concerning interpretation of laws. An advocate may also represent parties having antagonistic positions on a legal question that has arisen in different cases, unless representation of either client would be adversely affected. Thus, it is ordinarily not improper to assert such positions in cases pending in different trial courts, but it may be improper to do so in cases pending at the same time in an appellate court.

Interest of Person Paying for an Advocate's Service

An advocate may be paid from a source other than the client, if the client is informed of that fact and consents and the arrangement **does not compromise the advocate's duty of loyalty** to the client. For example, when an insurer and its insured have conflicting interests in a matter arising from a liability insurance agreement, and the insurer is required to provide special counsel for the insured, the arrangement should assure the special counsel's professional independence. So also, when a corporation and its directors or employees are involved in a controversy in which they have conflicting interests, the corporation may provide funds for separate legal representation of the directors or employees, if the clients consent after consultation and the arrangement ensures the advocate's professional independence. *Conflicts of interest* in contexts other than litigation sometimes may be difficult to assess. Relevant factors in determining whether there is potential for adverse effect include the duration and intimacy of the advocate's relationship with the client or clients involved, the functions being performed by the advocate, the likelihood that actual conflict will arise and the likely prejudice to the client from the conflict if it does arise. The question is often one of proximity and degree. For example, an advocate may not represent multiple parties to a negotiation whose interests are fundamentally antagonistic to each other, but common representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them. Conflict questions may also arise in estate planning and estate administration. An advocate may be called upon to prepare wills for several family members, such as husband and wife, and depending upon circumstances, conflict of interest may arise. In estate administration the identity of the client may be unclear under the law of a particular jurisdiction. Under one view, the client is the fiduciary; under another view the client is the estate or trust, including its beneficiaries. The advocate should make clear the relationship to the parties involved. In a similar *fashion* an advocate for a corporation or other organization who is also a member of its board of directors should determine whether the responsibilities of the two roles may conflict. He may be called on to advise the corporation in matters involving actions of the directors. Consideration should be given to the frequency with which such situations may arise, the potential intensity of the conflict, the effect of the advocate's resignation from the board and the possibility of the corporation's obtaining legal advice from another advocate in such situations. If there is material risk that the dual role will

compromise the advocate's independence of professional judgment, the advocate should not serve as a director.

Conflict Charged by an Opposing Party

Resolving questions of conflict of interest is primarily the responsibility of the advocate undertaking the representation. In litigation, a court may raise the question when there is reason to infer that the advocate has neglected the responsibility. In a criminal case, inquiry by the court is generally required when an advocate represents multiple defendants. Where the conflict is such clear that call in question the fair or efficient administration of justice, opposing counsel may properly raise the question. Such an objection should be viewed with caution, however, for it can be misused as a technique of harassment.

Conflict of Interest: Prohibited Transactions

An advocate shall not enter into a business transaction with a client or knowingly acquire an ownership, possession, security or other pecuniary interest adverse to a client unless:

1. the transaction and terms on which he acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in Writing to the client in a manner which can be reasonably understood by the client;
2. the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and
3. the client consents in writing thereto.

An advocate shall not use information related to representation of a client to the disadvantage of the client unless the client consents after consultation. He shall not prepare an instrument giving the advocate or a person related to him as parent, child, sibling, or spouse any substance from a client, including a testamentary gift. In addition to this an advocate shall not make or negotiate an agreement giving the advocate literary or media rights to a portrayal or account based in substantial part on information related to the representation Prior to the conclusion of representation.

Once again an advocate shall not provide financial assistance to a client in connection with pending or contemplate litigation, except that:

- 1) An advocate may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and
- 2) An advocate representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

An advocate shall not accept compensation for representing a client from one other than the client unless:

- i. the client consents after consultation;
- ii. there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
- iii. information relating to representation of a client is protected

An advocate who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client consents after consultation, including disclosure of the existence and nature of all the claims or pleas involved and of the participation of each person in the settlement.

An advocate shall not make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless permitted by law and the clients is independently represented in making the agreement, or settle a claim for such liability with an unrepresented client or former client without first advising that person in writing that independent representation is appropriate in connection there with.

An advocate related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon the consent by the client after consultation regarding the relationship.

Similarly an advocate shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the advocate may:

- 1) Acquire a lien granted by law to secure the lawyer's fee or expenses; and
- 2) Contract with a client for a reasonable contingent fee in a civil case.

4.3 Non-professional Subsidiary Activities

An advocate is not totally prohibited from involving in non-professional subsidiary activities. As any member of the society, but limited to those consistent with rules & principles of the profession.

CHAPTER FIVE

ETHICS OF THE PUBLIC PROSECUTOR

Introduction

As a principle by prosecution we mean the process of or the act of a criminal proceeding in which an accused person is tried. And the public prosecutor is a public official and of course a lawyer that represents the government (public) against an accused (suspect) in a criminal proceeding before a court of law. In exceptional instances the public prosecutor may involve in civil matters on behalf of the government. He is a lawyer, because his function (prosecution) requires a legal knowledge, skill and ethics. That is why most states under the eligibility section provides that a candidate for appointment as a public prosecutor must be a lawyer graduated from law schools of accredited colleges or Universities. And he is an official because he must be appointed by the competent organ that administers the office of the public prosecutor at federal or regional level. The need for appointment is to secure public confidence. Unlike a civil servant, in which mere employment relation suffices, he has to get blessing from other organs. This is because the function of the public prosecutor involves sensitive public interest. Before we deal with basic ethical requirement of public prosecutor, let us see the very purpose of public prosecution in general and basic functions of public prosecutor in particular.

5.1 Eligibility

Most countries establish minimum criteria to acquaint the status of Public Prosecutor or a candidate to be appointed as public prosecutor The most common ones are:

- Age;
- Nationality/citizenrieship/;
- Loyalty and acceptance of national laws of the concerned state ;especially the constitution;
- Being a lawyer ;

- Ethical requirements, mainly honesty, integrity, loyalty, impartiality, legality, diligence and having good public image;
- Having no criminal record except petty offences and offences punishable upon complaint or convicted but reinstated; and
- Some require experience.

In a similar fashion, the Federal Prosecutor Administration Council of Ministers Regulation No 44/1998 Article 4 provides requirements for the appointment of public prosecutor which states that any person who is an Ethiopian citizen; loyal, to the FDRE Constitution; a graduate in law with degree or diploma from a recognized University; distinguished himself by his diligence, loyalty and good character; and is of 18 years of age and above may be appointed as a prosecutor. One can see three categories of requirements to be competent for the prosecution responsibility namely; loyalty to the law, knowledge in the field of law and personal behavior without, however, disregarding the citizenship and age issue. Therefore, he/she who fulfills such requirements is eligible to quality appointment to the position as is stated under Article 8 of the same regulation.

Objective of Public Prosecution

- (1) Public Prosecutor's Office shall be an integral institution of judicial power that shall carry out supervision of law abeyance independently, within the limits of authority established by this law.
- (2) The basic objective of the Public Prosecutor's Office shall be to react in the event of any violation of law and to ensure review of such violation in accordance with procedures set by the law.
- (3) Public Prosecutor shall be such official of the Public Prosecutor's Office who hold any position provided by pertinent laws.

Basic Functions

The Public Prosecutor's Office shall:

- 1) supervise activities of inquiry institutions and operative activities of other institutions;
- 2) organize, conduct and perform pre-trial investigation;
- 3) initiate and carry out criminal prosecution;
- 4) prosecute on behalf of the State;
- 5) supervise implementation of penalties;
- 6) protect rights and lawful interests of persons and the State in accordance with procedures established by law;
- 7) submit claims and applications to courts in cases stipulated by law;
- 8) take part in court review of cases when required by law.

5.2 Legal Basis and Basic Ethical Principles for the Functions of Public Prosecutor

Legal Basis

Subject to preemptory norms; the legal basis of activities of the public prosecutor shall be the national laws of the country concerned especially the Constitution.

Principles

5.2.1 Independence, Impartiality and Immunity

Independence of Public Prosecutor

In their activities, public prosecutors shall be independent from any influence by any other institution or official of neither legislative nor executive branch and shall obey to laws only. In addition to intrinsic aspects, extrinsically the government shall pave conducive conditions to be independent safeguarding them from exposition to public influence providing the necessary

facilities including personal and job security. It shall be prohibited to the Cabinet of Ministers, institutions of state or local government institutions, civil servants of state or local government institutions, enterprises and organizations of any type, and to persons to interfere in activities of Public Prosecutor's Office while it is investigating cases or performing any other functions of Public Prosecutor's office; specially senior public prosecutors shall have the right to take over under their jurisdiction any case; however, they may not instruct any prosecutor to perform any activity that is against his/her conviction. Moreover the Public prosecutor shall be entitled to refuse or to release any information on any examination or investigation materials that are under the review by Public Prosecutor's Office. It shall be prohibited to have demonstrations, pickets and other actions organized in the premises of Public Prosecutor's Offices. For attempts to influence public prosecutors by unlawful methods or to interfere in activities of the Public Prosecutor's Office, persons shall be liable according to law.

Generally, the public prosecutor shall be free in the performance of his/her professional duties, dissociating himself/herself from any private interests or external influence. He/she must be independent in his/her judgment and incompatible with any affiliation which will jeopardize his/her judgment in relation with a case at hand. The prosecution area requires the public prosecutor not to act in the interest of any individual, party or group in performing the public duty. Such independence is definitely the prerequisite to render impartial official decision for such impartiality is required under Article 136(1) of the 1961 Ethiopian Criminal Procedure. The public prosecutor is often involved in the justice system as a party representing the public but must not discriminate based on race, gender, religion, nation, color... between the cases at hand and the persons who are subjected to his/her legal decisions of prosecution or any activity of discharging such professional responsibility. The Anti-Corruption Commission Regulation No. 4/2002 under its Article 5(1) provided that any public prosecutor shall defend the independence of the prosecution, be honest and maintain the reputation and respect of his profession. Article 8(6) of the same regulation reiterates a similar ethical rule stating that the prosecutor should take the necessary care in order not to jeopardize the independence of the prosecution and keep oneself from appealing investigators, courts and others. Such independency and impartiality issue has strong implication towards public reliance and confidence upon the undertakings of the prosecution in the justice system which is sought to bring about everlasting peace, order and

security to the general public. Hence, the public prosecutor must be independent and impartial in all his/her undertakings of identifying the real offender and protection of innocent citizens from being unduly disturbed in the process.

Immunity of Public Prosecutors

In order to discharge his function freely within the scope of his power the law should guarantee some sort of privilege or exemption from responsibility. For instance the public prosecutor can initiate criminal prosecution, detention, arrest, appearance by force and subjection to search of public prosecutors shall be performed in accordance with the procedure set by the law. Public prosecutors shall not be detained in accordance with procedures set by the administrative procedural law. For administrative offenses committed, disciplinary penalties shall be imposed on public prosecutors. Information systems, means of communication including electronic means of communication, may be controlled, copied and interfered only with consent by the competent authority.

5.2.2 Confidentiality

The public prosecutor should respect the principle of confidentiality of information he/she has acquired during the performance of his/her official duties except for legal reason. Such confidentiality shall not be solely non-disclosure of the information obtained in an official capacity, it also requires that in the course of performing his/her professional duties the public prosecutor shall not use the acquired information for his/her private interests nor allow the use of such information in the interest of other private individuals.

The very purpose which a person assumed the office of prosecution is answering the question of securing the peace, order and security of the general public as is stated under art.1 of the Criminal Code. There must be no other consideration which urges the public prosecutor in carrying out the job for which he/she is assigned. The information, which the public prosecutor knows in the due performance of his/her public duty, must be utilized to satisfy the real need of the public. It follows that; such information must not be exploited to promote personal interest of the public

prosecutor or other private individuals. Article 6 of Council of Ministers Regulation No 44/1998, with regard to confidentiality, states that any prosecutor should. Accordingly the public prosecutor shall not disclose to any person any information gained in the course of his official duties or otherwise except to the extent that such disclosure is necessary for the discharge of his lawful duty, unless such information is of minor importance or is a public knowledge; and may not disclose in the discharge of his duties or otherwise, information, proceedings, plans or similar classified matters, which, in accordance with practice have been declared confidential, to any person except by the order of supreme authority or unless such other person is legally permitted to know such matter.

This shows that the public prosecutor when obtained information taking care of the public affair must use and disclose such information for the public sake and in accordance with the law. The same ethical principle is provided under Article 5(5) of the Anti-corruption Regulation No. 4.2002 stating that unless authorized or permitted by a concerned organ or person, the public prosecutor whether he is in or leaves the commission, should not disclose confidential information.

5.2.3 Competence and Diligence

Competency connotes the ability of the public prosecutor to discharge his responsibility in reasonably well manner. The public prosecutor must be competent in performing his/her professional responsibility by representing the public in his /him area of engagement. He/She should upgrade his/her knowledge and skill by strictly attending the day today changes in the content of the law whether through education or training.

Since the prosecutor involves in an undertaking that directly regards the law, he/she should always identify the law in operation. It is only the law in operation which binds the public prosecutor, the courts and the accused subjected to criminal proceedings. Not only knowing what law exists but also how it should be applied requires exposure in the area. Thus, the public prosecutor should be applied to the particular case at hand. It is not an individual interest the public prosecutor is delegated to accomplish, but the interest of the general public. This signifies

how big and considerable responsibility he/she assumes. In order to satisfy such interest, the public prosecutor must always be alert and watch out what should be done in the day today activity. The ethical rule of competency applicable to the judges and the advocates is applicable to public prosecutor engagement despite the existence of different responsibility. The three are lawyers who should always be very competent in taking care of the responsibility they assumed. The Council of Ministers Regulation No 44/1998 Article 63 states, “Any public prosecutor shall perform his duties to his best knowledge and ability. He is required to discharge the usual duties and other related duties of the grade and the position to which he has been appointed and other related duties.” Article 9 of Regulation No 4/2002 of the Anti-Corruption Commission articulated that in order to develop or improve his professional competence, any public prosecutor shall have professional ethical obligations to following up and study the laws of Ethiopia; improving his knowledge by follow up the development of a current legal thinking; update the working procedures continuously in accordance with the program prepared for this purpose.

Therefore, professional competence in the duty of the public prosecutor regards the day today qualification of the same in discharging his/her responsibilities. Evaluation of the eligibility of the public prosecutor to the job is not only at the time of assuming the office but it continues also throughout the time he/she undertakes the activity he/she is in charge representing the interest of the general public.

The public prosecutor parallel to this is required to be diligent in performing the duty he/she assumed. He/she should give decisions timely and promptly taking in to account public money, public reliance and confidence upon the undertaking and still respecting the right to speedy trial of a person accused as is stated under Article 19(4) of the FDRE Constitution.

The public prosecutor is expected to utilize the public time and resource for the purpose to which it is allocated. He should duly be in office during office hours and must do what should be done in time. Article 15 of Regulation 44/1998 required the public prosecutor to respect government working hours. Article 61 of the same regulatory by the same token stated that any public

prosecutor shall devote his whole energy and ability to provide loyal service in the interest and for the benefit of the government and the public.

5.2.4 Loyalty and Avoidance of Conflict of Interest

Loyalty

In all his activities, the public prosecutor is expected to be loyal. As the name implies, the public prosecutor always represents the interests of the government. It is a bare fact that, the government is a representative of the public at large. Therefore, it is ethically required that the public prosecutor should be loyal to the interests of the government and the public. He is expected to devote his whole energy and ability to providing loyal service to safeguard the interests of the government and the public.

Conflict of Interest

Conflict of interest refers to a certain affair that immediately contradicts with one's responsibility disabling the same to decide fairly and without any form of bias. This may indispensably occur in the prosecution area. The public prosecutor may encounter a case which he/she cannot give independent and impartial decision due to the existence of direct or indirect self interest in the issue or the interest of a family, partner and the like. The question is whether the public prosecutor can treat the matter knowing the existence of conflict of interest in the issue at hand.

There must be no doubt to address the issue, i.e. the public prosecutor must not treat a matter when he/she knows there is conflict of interest. Article 68(1) of the Council of Ministers Regulation No. 44/1998 addressed the issue commanding that any prosecutor shall forthwith report to his superior a case in which his interest or his relative's or friend's interests conflict with his duties and shall request that the case be handled by another prosecutor. Here you can see that the public prosecutor when comes to know the existence of conflict of interest in a case before hand, should by his/her own motion withdraw or disqualify him/herself from treating the case. The same ethical principle is propounded under Article 6(9) of Anti-corruption Commission Regulation No 4/2002 specifying that any public prosecutor should refrain from indirectly a private or family case being handled by other prosecutors. Such issue of conflict of

interest operates to safeguard independence and impartiality for the sake of public reliance and confidence which is, indeed, the motive behind rendering public service

Public prosecutor shall not participate in court proceeding concerning any case, and the public prosecutor shall not examine any application, where the judge or counsel in the respective case or any person whose activities are investigated by such public prosecutor on the basis of any application, is the **spouse** of such public prosecutor or any direct relative with no degree limitation of the same or his/her **spouse**, or related to such public prosecutor by side-line relation in first three degrees, or related to such public prosecutor in first two degrees of in-law relation, as well as in the cases anticipated in the Corruption Prevention Law. In the above mentioned cases such public prosecutor shall reject him/herself. In the event such public Prosecutor has not rejected him/herself any person whose rights or legitimate interests may be infringed, may initiate revocation of such public prosecutor that shall be submitted to any senior public prosecutor or to the Court.

Application on revocation of such public prosecutor shall be reviewed in accordance with the procedure set by the law.

5.3 In relation to the Accused, the Court and Other Institutions

Achievement of justice is the effect of the cumulative effort of all branches of government. In the present day Ethiopian government system, federalism the legislative, executive, and judiciary branches at the federal and regional level should cooperate or show some sort of interdependence preserving their area of independence provided by law for this common end. The public prosecutor office institutionally and the public prosecutor individually is part of this process and his behavior should conform to this purpose.

The public prosecution office is a hierarchical institution, which is accountable to the Ministry of Justice (at the Federal level) or to Justice Bureau (at the Regional level). This indicates that the public prosecutor forms part of the executive organ of the government. Normally, what is expected from the government of a country, particularly democratic governments, is rendering fair justice to the community. In the endeavor to render fair justice both the executive,

legislative, and judicial organs are expected to play an important role. The different organs should act through their respective sub-divisions. The public prosecution forms one division of the executive organ.

Accused/Suspect/

Ethics in the Pre-trial Stage

As far as the relationship between the public prosecutor and the person suspected is concerned, the public prosecutor may conduct certain investigative activities. There are certain rights recognized by the law that are given to the person suspected. Whenever he conducts investigation, the public prosecutor is expected to clearly disclose the rights of the suspect recognized by the law. For example, if it is the public prosecutor who conducts interrogation of the suspect, the former is expected to tell the latter that he has the right to keep silent and whatever he tells will be used as evidence against him in the court. Therefore, it is unethical to withhold what is in favor of the suspect in the process of investigation.

It is also not proper if the public prosecutor encroaches in the legally recognized rights of the person prosecuted. As we have seen earlier, the mere fact that a person is suspected and prosecuted of a given crime does not mean that such person has committed the crime. The final result would be either conviction or acquittal. Be whatever it is, the public prosecutor is expected to observe the rights of the person prosecuted. Not only himself, but also the personnel under the public prosecutor should observe the rights of the suspect. The public prosecutor is expected to ascertain that the police as well as other personnel under his control respect and refrain from interfering into the rights of the person suspected.

As part of the duty to respect the rights of the person suspected, the public prosecutor is always expected to avoid taking any measure that would bring about restraint of the right of movement of the suspect. Whenever there is a need to affect the suspect's freedom of movement, it has to be in compliance with what is provided by the law. The public prosecutor should apply to the court and seek court order to the effect that the suspect's freedom of movement be restrained or coercive measures be taken in respect of such a person. In this relationship the public prosecutor

is expected to be impartial. He should always act neutrally and independently only in line with equality, truth and justice based on the rules and principles of the law. It is obvious that the public prosecutor always represents the government and thereby the public at large. Despite this fact, as far as his prosecutorial office is concerned, the public prosecutor should not unnecessarily get biased against the accused. The person accused may be found innocent and acquitted by the court. Therefore, it is not ethically proper to do acts contrary to the truth and justice.

During Trial

The activities of the public prosecutor also continue in the process of trial of the case. We have discussed the standard of ethics expected from the public prosecutor in the pre-trial stage. After the investigation is accomplished, the investigator hands over the file to the public prosecutor. After receiving the investigation file, the public prosecutor decides whether to frame a charge or otherwise. Where the public prosecutor decides not to bring a charge against the suspect due to lack of sufficient evidence, he closes the file. He may order further investigation with the view of extracting sufficient pieces of evidence. But where there is sufficient evidence, in the eyes of the public prosecutor and he has decided to institute charge against the suspect, the public prosecutor enters into the trial. In this section, therefore, we are going to discuss the ethical requirements expected from the public prosecutor at the trial stage.

Where the public prosecutor has instituted a charge against a certain person suspected of committing crime, he should always be present in the court. In every public hearing, the public prosecution should be represented. Ethically, what is expected from the public prosecutor is that he should respect adjournments. If the public prosecutor is unable to be present for a reason beyond his scope (force majeure) he has to notify to the office of prosecution as early as practically possible. This is directly or indirectly related to the rights of the person suspected. Apart from presence in the court, the public prosecutor should respect the principles of public and adversarial debate. Unless it is in the exceptional cases provided by the law, court debates should be open and in public. It is where such public hearing affects certain interests that the law prohibits public hearing. The public prosecutor, therefore, should not request for hearing in

camera unless the law provides it. Where there is such behavior, the public prosecutor is considered to have violated the standards of ethics.

The public prosecutor is also expected to respect the principles of adversarial debate. In all cases, the proceeding in the court should be adversarial. The principle of adversarial debate requires fair trial in that both of the parties to the case are properly heard. In criminal proceedings, the public prosecutor should not demand to present his case, as a plaintiff, in a way different from what the law requires, He should not demand judgment to be passed based only on the evidence presented by him or only his evidences should be accepted. As one of the requirements of fair trial is the prompt communication of evidences presented by the parties, the public prosecutor should always observe the obligation of timely communication of evidences to the person prosecuted or his representative.

We have seen earlier that the accused person may be convicted or acquitted. The person prosecuted could be acquitted because he has not committed the alleged crime or even if he has committed the crime, because the public prosecutor could not prove what has been alleged. In the course of court proceeding, the public prosecutor should avoid prejudice against the person prosecuted. There is no situation of enmity between the accused and the public prosecutor. Therefore, the public prosecutor should not have biased position against the suspect. Moreover, the public prosecutor should always present the law properly. Where the public prosecutor misrepresents the law or the evidence that is a behavior against the standards of ethics.

Basically, the function of the public prosecutor is in the area of criminal law. But in few exceptional cases provided by the law, the public prosecutor may involve in civil matters. Otherwise, it is unethical if the public prosecutor claims to intervene in civil proceedings. Normally, civil proceedings are actions between private citizens. The same is true for crimes punishable up on complaint. The public prosecutor should not be careless in the supervision of execution of penal sentences. The function of the public prosecutor can be said to be completed and effective when it is executed. . Therefore it is his ethical responsibility to follow up the fate of the conviction of criminal working incorporation with other administrative units of the government like that of prison administration In the course of such supervision, the public

prosecutor should ascertain that the constitutional rights of the person imprisoned are observed and respected. Thus, carelessness on the part of the public prosecutor amounts to violation of the standards of ethics.

The Court

The public prosecutor's activity is highly related to the court. In his day-to-day relations with the judges in the court, the public prosecutor should respect the independence of the judges. How do you think that the public prosecutor respects independence of the judges? Basically, the public prosecutor is expected to accept and comply with the orders and decisions of the judges. It is not ethically acceptable that the public prosecutor makes critical comments in respect of the nature of decisions taken by judges. However, it has to be noted here that the public prosecutor should not be precluded from arguing on applications of appeal. Generally, except on grounds provided by law, the public prosecutor should refrain from behaving and doing acts that encroach in the independence of judges. Moreover he should put the necessary gown dressing and suited cloth where he appears in court as per, (Article 6(2) of Regulation 4/2002 of the Anti-Corruption Commission). This is to give due respect to the dignity of the court.

Other Institutions

Justice is the cumulative effect of the effort of different organs of the government. To contribute to the justice machinery in general the public prosecutor should work in cooperation with other institutions preserving his area of independence. Splendid isolation is becoming old-fashioned and ineffective. Actually the principal ethical duty of the public prosecutor in these institutions is related to obedience. Accordingly the public prosecutor should obey the order of his superiors for which he is responsible such as ministry of justice; justice bureau and officials indifferent councils and levels including the court. To state it otherwise in the course of discharging his official duties, the public prosecutor should not refuse to obey the orders of his superior. It would be violation of the requirements of ethics of his profession if the public prosecutor refuses to obey orders of his superior. However the order should be reasonable and lawful. He is not bound to accept clearly unlawful or an order against his professional conduct. In such away he is not condemn for disobedience. For the legality of dubious orders the superior shall take the responsibility

We have discussed earlier that the public prosecution office is hierarchically under the Ministry of Justice at Federal Government level and under the Justice Bureau at Regional Government level. This hierarchy indicates that the public prosecutor respects the orders of the Ministry of Justices or the Bureau, as the case may be. As a consequence, a public prosecutor is supposed to accept the order to relinquish a given case to another public prosecutor. The rationale behind this is that the public prosecution is indivisible. Every member of the prosecution office may replace any other member at any time in the course of proceedings. Therefore, a public prosecutor cannot refuse to continue a proceeding started by another prosecutor. Where there is objection or refusal, on the part of a public prosecutor, without justifiable grounds, it amounts to deviation from the set of standards of ethics.

In relation to the Police

The police and the public prosecutor should work hand in hand for the maintenance of peace and order. They should have smooth relation. The public prosecutor as superior should treat ethically and should accept the fact that police his assistant especially he shouldn't harass to obey his un reasonable order. One of the duties of the public prosecutor in relation to the activities of the police is to overlook the police judicial activities. In some cases, the police may arrest individuals unlawfully or those who are arrested lawfully may stay in the police station unnecessarily. In order to avoid such and other improper things, the public prosecutor is under duty to supervise police judicial activities. The public prosecutor can discharge this duty by frequently paying visits to police stations. Apart from paying frequent visits, the public prosecutor is expected to go in person to the scene of any reported serious offence. Where there is failure or refusal to discharge these duties on the part of the public prosecutor, it amounts to deviation from the standards of ethics. As the public prosecution office is hierarchically under the Ministry of Justice or Justice Bureau, as the case may be, the police are also under the order of the public prosecutor. This however does not mean that for all purpose the police force is under the public prosecution office. It is only as regards the criminal investigation matters that the public prosecutor can order the police force. In the course of discharging his responsibilities, the public prosecutor can resort to the use of force. The force to be used should be public force. In all cases of use of public force, the public prosecutor should ascertain. Sometimes it becomes the only option for the public prosecutor or any other organ to use public force so that to

discharge the expected function. For example, in the course of investigation of a certain crime, the suspect may resist to allow the investigator to search his residence or premises. In such cases, so long as there is search warrant, employing appropriate force becomes necessary. Otherwise, where public force is employed while there is another alternative, it would not be justifiable.

In relation to the Public

As any ordinary person a public prosecutor may have social interactions with the society in which he is living. But his involvement should be limited and must be inline with the ethical principles of public prosecutor. He should always exhibit good behavior and conduct. In all times, the public prosecutor should be a model of good citizenry having socially acceptable behavior. It is where he and/ or when shows good behavior and conduct that the public prosecutor can develop good public image and win the confidence of the public. He has to always recall that he is the agent of the public and the government in the enforcement of justice. All of his activities should be limited not to affect the material and psychological (grace) interest of the people. More over he has to make Endeavour not to affect the human and democratic rights of persons in general. Some of the instances of the sensitive activities in his social interactions are borrowing, accepting of donation, involvement in income generating business; and any shameful action that is inconsistent with the status of public prosecutor.

Borrowing Money and Gifts

Life is full of ups and down .We human beings are limited and imperfect in many aspects of life, including economic aspects. Resource is limited and human want is unlimited .In the course of life, the public prosecutor may be short of hand. In such cases, he may demand loan from other persons. As people are not usually self-sufficient, it would not be fair to absolutely prohibit the public prosecutor from borrowing money on the sole fact that he is agent of the public. Thus we have to allow him to borrow. But with limited extent and from limited persons. The issue is if the public prosecutor is allowed to borrow money, how limited is he or how limited are his borrowers? It is not clear as to how often the public prosecutor can borrow money from these specific persons. The Regulation under Article 66 connotes similar idea stating that persistent borrowing is prohibited. It is questionable that how frequent is considered to be persistent. Bu it is possible to argue that the public prosecutor should not heavily rely on loan from other persons.

In his life, he has to try his best to live on his monthly salary and other legal incomes. Otherwise, if the life of the public prosecutor is highly dependent on borrowing that, probably, it may affect his stand to protect the interests of the government and the public. The central issue is that the public prosecutor has to lead economical life not expose to temptation of borrowing. And generally article 67 of the Federal prosecutor administration regulations prohibit the prosecutor from soliciting or taking remuneration or consideration in any for any person in relation to a service rendered or to be rendered in the future. The prosecutor is a public servant who is paid by the government for the service he renders. His remuneration is the salary and benefits he receives from the government. He is not therefore, allowed to take any remuneration form any one in connection with the service he rendered or is expected to render. *Money, gifts in kind or any other form of consideration* solicited or otherwise should not be taken by the public persecutor from any person or organization with respect to the official duties he has discharged or is expected to discharge

We have seen above that the public prosecutor is not absolutely prohibited from borrowing money from other persons. But, this does not mean that it is allowed to borrow money from any person he likes. It is strictly prohibited for the public prosecutor to borrows money from a person with whom he has contact in discharging his official duties. For example, it would not be fair if the public prosecutor is allowed to borrow from the suspect against whom he brought a charge or against whom the investigation is pending. The idea behind is quite clear that the public prosecutor would not render loyal service in the interest of the government and the public.

Disclosure of Income

Even if the public prosecutor is not absolutely prohibited from involvement in restricted extra-professional income generating business activities; it is his ethical duty to disclose the income earned from this involvement.

5.4 Engaging in Activities Outside Official Duties

The public prosecutor in principle should be devoted and dedicated to the responsibility to which he/she is assigned. Every priority should be given to his/her main duty of representing the public

in cases that involve the public interest. Article 71 of the Regulation of the Council of Ministers directed that any prosecutor shall during normal working hours devote his full energy and attention to his official duty for which he is paid (sub (1). He shall, as well, not undertake any outside activity which would impair his service or which in any way conflicts with his duties or is inconsistent with his position and profession as a prosecutor sub(2). Such rule is however not absolute as one can understand from the second statement above and Article 71(1) in the second statement which stated that a public prosecutor shall undertake to work for other governmental offices or public enterprises upon receiving the appropriate order. Here one can see that without affecting the job of the prosecution office, the public prosecutor may be ordered to involve in other governmental activities for such activity regards public interest and the public prosecutor in all its activities represent the public. As one, by the same token, understand from the reading of sub (1) (b) of Article 71, the public prosecutor can take part in other activities than the prosecution undertaking provided, however, that is possible if the activity does not go in contradiction with the main duty. If the activity is not disabling the public prosecutor to effectively discharge the prosecution responsibility. Example, the public prosecutor may teach, train and give lecture with regarding to the law and still can write about the law without eroding the office responsibility. But in doing so the public prosecutor should first secure the permission of the Minister of the Ministry of Justice under sub (2) of the same. More over these should be done after securing the consent of the concerned organ for which the public prosecutor is responsible. And generally the extra activities shouldn't be against the conduct of the prosecutor's professional ethics.

5.5 Other Ethical Considerations

The function of public prosecutor shall not be compatible with membership in any partisan activities including political parties or other political organizations. Can the public prosecutor be a member of a certain political grouping in Ethiopia? Even if such issue is not specifically addressed under the code of conduct of public prosecutors, the question must be addressed in terms of whether such activity goes in contradiction of the impartiality and independence; the dignity of the profession; the office time; public reliance and confidence; or the issue of conflict

of interest or not. If the answer goes to the affirmative, the public prosecutor must not take part in political activities.

The public prosecutor has to dress socially acceptable clothes, recreate in dignified places outside his office. Any public prosecutor shall, at all the time, exhibit good behavior and conduct in and outside office in order to win the respect and confidence of the public. He shall at all times fulfill whatsoever required of him to protect the dignity of his profession as one can understand from the reading of Article 62 of regulation No 44/1998. In particular, any public prosecutor shall not carryout his duty intoxicated with alcohol or drug and shall keep oneself from being addicted by virtue of Article 10 of Anti-corruption Commission Regulation 4/2002. The public prosecutor in addition should not borrow money persistently and is strictly prohibited from borrowing money or attempting to borrow money from a member of the public with whom the prosecutor has contact in charge of his official duties (Article 66 of the Council of Ministers Regulation). Moreover, he/she is required not to solicit or take remuneration or consideration in whatever from any person in respect of services rendered or expected to be rendered under Article 68 of the same regulation. The public prosecutor further more is required to utilize office equipments only to the extent necessary to accomplish his work appropriately pursuant to Article 70 of the same regulation.

5.6 Liability for Violation of Codes of Conduct for Prosecutors

As codes of conduct are families of the law they shall be enforced (sanctioned).And depending on the type of interest violated and the persons affected the public prosecutor will be liable criminally, administratively, or civilly.

5.6.1 Administrative (Disciplinary) Liabilities

The administrative liability of the public prosecutor for violation of codes of conduct is regulated by article 81 and seq. of the federal prosecutor's administration regulation. Pursuant to this regulation the public prosecutor is subject to either simple or grave disciplinary penalties. The simple ones are: written warning, a fine not exceeding one month's salary, and disallowance of

the next increment pay. And the grounds or the basis to impose these liabilities are; failure to show effort and diligence at work, failure to cooperate with colleagues, obstructing the smooth execution of work, persistent borrowing and similar faults. There are also grave disciplinary penalties; the serious ones are demotion and dismissal. The disciplinary offences that entail grave penalties are: taking or soliciting bribes, falsification of documents with intent to obtain benefit for one self or a third party, creating inconvenience to the public by delay of service without good cause, initiating quarrel at work place, regular absence from work without good cause or without obtaining leave , committing any act against moral and good behavior at work place and similar faults.

5.6.2 Criminal Liability

When the interest affected is that of public attributed to the violated code of conduct as stated in different criminal laws including the cross references made by the codes of conduct for public prosecutors; he will be criminally liable. With regard to the extent of liability we have seen here in above that the maximum administrative liability for serious administrative offences is dismissal. But criminal liability may exceed beyond this scope including restriction of liberty like imprisonment.

5.6.3 Civil Liability

While violating the codes of conduct the public prosecutor's action/omission may not be only limited to affecting public interest and bureaucracy, but also extends to affecting the individuals or groups material (economic), or moral interest or civil matters in general. Therefore, he has to redress the loss sustained in addition to his criminal and administrative liabilities as far as they deserve it based on civil law provisions; for instance article 2027 and seq. of the civil code of the empire of Ethiopia.

LAWS AND SUGGESTED READINGS

Table of Laws

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**THE BANGALORE PRINCIPLES
OF JUDICIAL CONDUCT**

2002

(The Bangalore Draft Code of Judicial Conduct 2001 adopted by the Judicial Group on Strengthening Judicial Integrity, as revised at the Round Table Meeting of Chief Justices held at the Peace Palace, The Hague, November 25-26, 2002)

Preamble

WHEREAS the *Universal Declaration of Human Rights* recognizes as fundamental the principle that everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of rights and obligations and of any criminal charge.

WHEREAS the *International Covenant on Civil and Political Rights* guarantees that all persons shall be equal before the courts, and that in the determination of any criminal charge or of rights and obligations in a suit at law, everyone shall be entitled, without undue delay, to a fair and public hearing by a competent, independent and impartial tribunal established by law.

WHEREAS the foregoing fundamental principles and rights are also recognized or reflected in regional human rights instruments, in domestic constitutional, statutory and common law, and in judicial conventions and traditions.

WHEREAS the importance of a competent, independent and impartial judiciary to the protection of human rights is given emphasis by the fact that the implementation of all the other rights ultimately depends upon the proper administration of justice.

WHEREAS a competent, independent and impartial judiciary is likewise essential if the courts are to fulfil their role in upholding constitutionalism and the rule of law.

WHEREAS public confidence in the judicial system and in the moral authority and integrity of the judiciary is of the utmost importance in a modern democratic society.

WHEREAS it is essential that judges, individually and collectively, respect and honour judicial office as a public trust and strive to enhance and maintain confidence in the judicial system.

WHEREAS the primary responsibility for the promotion and maintenance of high standards of judicial conduct lies with the judiciary in each country.

AND WHEREAS the *United Nations Basic Principles on the Independence of the Judiciary* are designed to secure and promote the independence of the judiciary, and are addressed primarily to States.

THE FOLLOWING PRINCIPLES are intended to establish standards for ethical conduct of judges. They are designed to provide guidance to judges and to afford the judiciary a framework for regulating judicial conduct. They are also intended to assist members of the executive and the legislature, and lawyers and the public in general, to better understand and support the judiciary. These principles presuppose that judges are accountable for their conduct to appropriate institutions established to maintain judicial standards, which are themselves independent and impartial, and are intended to supplement and not to derogate from existing rules of law and conduct which bind the judge.

Value 1:

INDEPENDENCE

Principle:

Judicial independence is a pre-requisite to the rule of law and a fundamental guarantee of a fair trial. A judge shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.

Application:

1.1 A judge shall exercise the judicial function independently on the basis of the judge's assessment of the facts and in accordance with a conscientious understanding of the law, free of any extraneous influences, inducements, pressures, threats or interference, direct or indirect, from any quarter or for any reason.

1.2 A judge shall be independent in relation to society in general and in relation to the particular parties to a dispute which the judge has to adjudicate.

1.3 A judge shall not only be free from inappropriate connections with, and influence by, the executive and legislative branches of government, but must also appear to a reasonable observer to be free therefrom.

1.4 In performing judicial duties, a judge shall be independent of judicial colleagues in respect of decisions which the judge is obliged to make independently.

1.5 A judge shall encourage and uphold safeguards for the discharge of judicial duties in order to maintain and enhance the institutional and operational independence of the judiciary.

1.6 A judge shall exhibit and promote high standards of judicial conduct in order to reinforce public confidence in the judiciary which is fundamental to the maintenance of judicial independence.

Value 2:

IMPARTIALITY

Principle:

Impartiality is essential to the proper discharge of the judicial office. It applies not only to the decision itself but also to the process by which the decision is made.

Application:

2.1 A judge shall perform his or her judicial duties without favour, bias or prejudice.

2.2 A judge shall ensure that his or her conduct, both in and out of court, maintains and enhances the confidence of the public, the legal profession and litigants in the impartiality of the judge and of the judiciary.

2.3 A judge shall, so far as is reasonable, so conduct himself or herself as to minimise the occasions on which it will be necessary for the judge to be disqualified from hearing or deciding cases.

2.4 A judge shall not knowingly, while a proceeding is before, or could come before, the judge, make any comment that might reasonably be expected to affect the outcome of such proceeding or impair the manifest fairness of the process. Nor shall the judge make any comment in public or otherwise that might affect the fair trial of any person or issue.

2.5 A judge shall disqualify himself or herself from participating in any proceedings in which the judge is unable to decide the matter impartially or in which it may appear to a reasonable observer that the judge is unable to decide the matter impartially. Such proceedings include, but are not limited to, instances where

2.5.1 the judge has actual bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceedings;

2.5.2 the judge previously served as a lawyer or was a material witness in the matter in controversy; or

2.5.3 the judge, or a member of the judge's family, has an economic interest in the outcome of the matter in controversy:

Provided that disqualification of a judge shall not be required if no other tribunal can be constituted to deal with the case or, because of urgent circumstances, failure to act could lead to a serious miscarriage of justice.

Value 3:

INTEGRITY

Principle:

Integrity is essential to the proper discharge of the judicial office.

Application:

3.1 A judge shall ensure that his or her conduct is above reproach in the view of a reasonable observer.

3.2 The behaviour and conduct of a judge must reaffirm the people's faith in the integrity of the judiciary. Justice must not merely be done but must also be seen to be done.

Value 4:

PROPRIETY

Principle:

Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a judge.

Application:

4.1 A judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities.

4.2. As a subject of constant public scrutiny, a judge must accept personal restrictions that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly. In particular, a judge shall conduct himself or herself in a way that is consistent with the dignity of the judicial office.

4.3. A judge shall, in his or her personal relations with individual members of the legal profession who practise regularly in the judge's court, avoid situations which might reasonably give rise to the suspicion or appearance of favouritism or partiality.

4.4 A judge shall not participate in the determination of a case in which any member of the judge's family represents a litigant or is associated in any manner with the case.

4.5 A judge shall not allow the use of the judge's residence by a member of the legal profession to receive clients or other members of the legal profession.

4.6 A judge, like any other citizen, is entitled to freedom of expression, belief, association and assembly, but in exercising such rights, a judge shall always conduct himself or herself in such a manner as to preserve the dignity of the judicial office and the impartiality and independence of the judiciary.

4.7 A judge shall inform himself or herself about the judge's personal and fiduciary financial interests and shall make reasonable efforts to be informed about the financial interests of members of the judge's family.

4.8 A judge shall not allow the judge's family, social or other relationships improperly to influence the judge's judicial conduct and judgment as a judge.

4.9 A judge shall not use or lend the prestige of the judicial office to advance the private interests of the judge, a member of the judge's family or of anyone else, nor shall a judge convey or permit others to convey the impression that anyone is in a special position improperly to influence the judge in the performance of judicial duties.

4.10 Confidential information acquired by a judge in the judge's judicial capacity shall not be used or disclosed by the judge for any other purpose not related to the judge's judicial duties.

4.11 Subject to the proper performance of judicial duties, a judge may:

4.11.1 write, lecture, teach and participate in activities concerning the law, the legal system, the administration of justice or related matters;

4.11.2 appear at a public hearing before an official body concerned with matters relating to the law, the legal system, the administration of justice or related matters;

4.11.3 serve as a member of an official body, or other government commission, committee or advisory body, if such membership is not inconsistent with the perceived impartiality and political neutrality of a judge; or

4.11.4 engage in other activities if such activities do not detract from the dignity of the judicial office or otherwise interfere with the performance of judicial duties.

4.12 A judge shall not practise law whilst the holder of judicial office.

4.13 A judge may form or join associations of judges or participate in other organizations representing the interests of judges.

4.14 A judge and members of the judge's family, shall neither ask for, nor accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done by the judge in connection with the performance of judicial duties.

4.15 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or authority, to ask for, or accept, any gift, bequest, loan or favour in relation to anything done or to be done or omitted to be done in connection with his or her duties or functions.

4.16 Subject to law and to any legal requirements of public disclosure, a judge may receive a token gift, award or benefit as appropriate to the occasion on which it is made provided that such gift, award or benefit might not reasonably be perceived as intended to influence the judge in the performance of judicial duties or otherwise give rise to an appearance of partiality.

Value 5:

EQUALITY

Principle:

Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.

Application:

5.1 A judge shall be aware of, and understand, diversity in society and differences arising from various sources, including but not limited to race, colour, sex, religion, national origin, caste, disability, age, marital status, sexual orientation, social and economic status and other like causes ("irrelevant grounds").

5.2 A judge shall not, in the performance of judicial duties, by words or conduct, manifest bias or prejudice towards any person or group on irrelevant grounds.

5.3 A judge shall carry out judicial duties with appropriate consideration for all persons, such as the parties, witnesses, lawyers, court staff and judicial colleagues, without differentiation on any irrelevant ground, immaterial to the proper performance of such duties.

5.4 A judge shall not knowingly permit court staff or others subject to the judge's influence, direction or control to differentiate between persons concerned, in a matter before the judge, on any irrelevant ground.

5.5 A judge shall require lawyers in proceedings before the court to refrain from manifesting, by words or conduct, bias or prejudice based on irrelevant grounds, except such as are legally relevant to an issue in proceedings and may be the subject of legitimate advocacy.

Value 6:

COMPETENCE AND DILIGENCE

Principle:

Competence and diligence are prerequisites to the due performance of judicial office.

Application:

6.1 The judicial duties of a judge take precedence over all other activities.

6.2 A judge shall devote the judge's professional activity to judicial duties, which include not only the performance of judicial functions and responsibilities in court and the making of decisions, but also other tasks relevant to the judicial office or the court's operations.

6.3 A judge shall take reasonable steps to maintain and enhance the judge's knowledge, skills and personal qualities necessary for the proper performance of judicial duties, taking advantage for

this purpose of the training and other facilities which should be made available, under judicial control, to judges.

6.4 A judge shall keep himself or herself informed about relevant developments of international law, including international conventions and other instruments establishing human rights norms.

6.5 A judge shall perform all judicial duties, including the delivery of reserved decisions, efficiently, fairly and with reasonable promptness.

6.6 A judge shall maintain order and decorum in all proceedings before the court and be patient, dignified and courteous in relation to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity. The judge shall require similar conduct of legal representatives, court staff and others subject to the judge's influence, direction or control.

6.7 A judge shall not engage in conduct incompatible with the diligent discharge of judicial duties.

IMPLEMENTATION

By reason of the nature of judicial office, effective measures shall be adopted by national judiciaries to provide mechanisms to implement these principles if such mechanisms are not already in existence in their jurisdictions.

DEFINITIONS

In this statement of principles, unless the context otherwise permits or requires, the following meanings shall be attributed to the words used:

"*Court staff*" includes the personal staff of the judge including law clerks.

"*Judge*" means any person exercising judicial power, however designated.

"*Judge's family*" includes a judge's spouse, son, daughter, son-in-law, daughter-in-law, and any other close relative or person who is a companion or employee of the judge and who lives in the judge's household.

"*Judge's spouse*" includes a domestic partner of the judge or any other person of either sex in a close personal relationship with the judge.

Explanatory Note

1. At its first meeting held in Vienna in April 2000 on the invitation of the United Nations Centre for International Crime Prevention, and in conjunction with the 10th United Nations Congress on the Prevention of Crime and the Treatment of Offenders, the Judicial Group on Strengthening Judicial Integrity (comprising Chief Justice Latifur Rahman of Bangladesh, Chief Justice Bhaskar Rao of Karnataka State in India, Justice Govind Bahadur Shrestha of Nepal, Chief Justice Uwais of Nigeria, Deputy Vice-President Langa of the Constitutional Court of South Africa, Chief Justice Nyalali of Tanzania, and Justice Odoki of Uganda, meeting under the chairmanship of Judge Christopher Weeramantry, Vice-President of the International Court of Justice, with Justice Michael Kirby of the High Court of Australia as rapporteur, and with the participation of Dato' Param Cumaraswamy, UN Special Rapporteur on the Independence of Judges and Lawyers) recognized the need for a code against which the conduct of judicial officers may be measured. Accordingly, the Judicial Group requested that codes of judicial conduct which had been adopted in some jurisdictions be analyzed, and a report be prepared by the Co-ordinator of the Judicial Integrity Programme, Dr Nihal Jayawickrama, concerning: (a) the core considerations which recur in such codes; and (b) the optional or additional considerations which occur in some, but not all, such codes and which may or may not be suitable for adoption in particular countries.

2. In preparing a draft code of judicial conduct in accordance with the directions set out above, reference was made to several existing codes and international instruments including, in particular, the following:

- a) The Code of Judicial Conduct adopted by the House of Delegates of the American Bar Association, August 1972.
- b) Declaration of Principles of Judicial Independence issued by the Chief Justices of the Australian States and Territories, April 1997.
- c) Code of Conduct for the Judges of the Supreme Court of Bangladesh, prescribed by the Supreme Judicial Council in the exercise of power under Article 96(4)(a) of the Constitution of the People's Republic of Bangladesh, May 2000.
- d) Ethical Principles for Judges, drafted with the cooperation of the Canadian Judges Conference and endorsed by the Canadian Judicial Council, 1998.

- e) The European Charter on the Statute for Judges, Council of Europe, July 1998.
- f) The Idaho Code of Judicial Conduct 1976.
- g) Restatement of Values of Judicial Life adopted by the Chief Justices Conference of India, 1999.
- h) The Iowa Code of Judicial Conduct.
- i) Code of Conduct for Judicial Officers of Kenya, July 1999.
- j) The Judges' Code of Ethics of Malaysia, prescribed by the Yang di-Pertuan Agong on the recommendation of the Chief Justice, the President of the Court of Appeal and the Chief Judges of the High Courts, in the exercise of powers conferred by Article 125(3A) of the Federal Constitution of Malaysia, 1994.
- k) The Code of Conduct for Magistrates in Namibia.
- l) (Rules Governing Judicial Conduct, New York State, USA.
- m) Code of Conduct for Judicial Officers of the Federal Republic of Nigeria.
- n) Code of Conduct to be observed by Judges of the Supreme Court and of the High Courts of Pakistan.
- o) The Code of Judicial Conduct of the Philippines, September 1989.
- p) The Canons of Judicial Ethics of the Philippines, proposed by the Philippines Bar Association, approved by the Judges of First Instance of Manila, and adopted for the guidance of and observance by the judges under the administrative supervision of the Supreme Court, including municipal judges and city judges.
- q) Yandina Statement: Principles of Independence of the Judiciary in Solomon Islands, November 2000.
- r) Guidelines for Judges of South Africa, issued by the Chief Justice, the President of the Constitutional Court, and the Presidents of High Courts, the Labour Appeal Court, and the Land Claims Court, March 2000.
- s) Code of Conduct for Judicial Officers of Tanzania, adopted by the Judges and Magistrates Conference, 1984.
- t) The Texas Code of Judicial Conduct
- u) Code of Conduct for Judges, Magistrates and Other Judicial Officers of Uganda, adopted by the Judges of the Supreme Court and the High Court, July 1989.
- v) The Code of Conduct of the Judicial Conference of the United States.

- w) The Canons of Judicial Conduct for the Commonwealth of Virginia, adopted and promulgated by the Supreme Court of Virginia, 1998.
- x) The Code of Judicial Conduct adopted by the Supreme Court of the State of Washington, USA, October 1995.
- y) The Judicial (Code of Conduct) Act, enacted by the Parliament of Zambia, December 1999.
- z) Draft Principles on the Independence of the Judiciary ("Siracusa Principles"), prepared by a committee of experts convened by the International Association of Penal Law, the International Commission of Jurists, and the Centre for the Independence of Judges and Lawyers, 1981.
- aa) Minimum Standards of Judicial Independence adopted by the International Bar Association, 1982.
- bb) United Nations Basic Principles on the Independence of the Judiciary, endorsed by the UN General Assembly, 1985.
- cc) Draft Universal Declaration on the Independence of Justice ("Singhvi Declaration") prepared by Mr L.V. Singhvi, UN Special Rapporteur on the Study on the Independence of the Judiciary, 1989.
- dd) The Beijing Statement of Principles of the Independence of the Judiciary in the Lawasia Region, adopted by the 6th Conference of Chief Justices, August 1997.
- ee) The Latimer House Guidelines for the Commonwealth on good practice governing relations between the Executive, Parliament and the Judiciary in the promotion of good governance, the rule of law and human rights to ensure the effective implementation of the Harare Principles, 1998.
- ff) The Policy Framework for Preventing and Eliminating Corruption and Ensuring the Impartiality of the Judicial System, adopted by the expert group convened by the Centre for the Independence of Judges and Lawyers, February 2000.

At its second meeting held in Bangalore in February 2001, the Judicial Group (comprising Chief Justice Mainur Reza Chowdhury of Bangladesh, Justice Claire L'Heureux Dube of Canada, Chief Justice Reddi of Karnataka State in India, Chief Justice Upadhyay of Nepal, Chief Justice Uwais of Nigeria, Deputy Chief Justice Langa of South Africa, Chief Justice Silva of Sri Lanka,

Chief Justice Samatta of Tanzania, and Chief Justice Odoki of Uganda, meeting under the chairmanship of Judge Weeramantry, with Justice Kirby as rapporteur, and with the participation of the UN Special Rapporteur and Justice Bhagwati, Chairman of the UN Human Rights Committee, representing the UN High Commissioner for Human Rights) proceeding by way of examination of the draft placed before it, identified the core values, formulated the relevant principles, and agreed on the Bangalore Draft Code of Judicial Conduct. The Judicial Group recognized, however, that since the Bangalore Draft had been developed by judges drawn principally from common law countries, it was essential that it be scrutinized by judges of other legal traditions to enable it to assume the status of a duly authenticated international code of judicial conduct.

The Bangalore Draft was widely disseminated among judges of both common law and civil law systems and discussed at several judicial conferences. In June 2002, it was reviewed by the Working Party of the Consultative Council of European Judges (CCJE-GT), comprising Vice-President Reissner of the Austrian Association of Judges, Judge Fremr of the High Court in the Czech Republic, President Lacabarats of the Cour d'Appel de Paris in France, Judge Mallmann of the Federal Administrative Court of Germany, Magistrate Sabato of Italy, Judge Virgilijus of the Lithuanian Court of Appeal, Premier Conseiller Wiwinus of the Cour d'Appel of Luxembourg, Juge Conseiller Afonso of the Court of Appeal of Portugal, Justice Ogrizek of the Supreme Court of Slovenia, President Hirschfeldt of the Svea Court of Appeal in Sweden, and Lord Justice Mance of the United Kingdom. On the initiative of the American Bar Association, the Bangalore Draft was translated into the national languages, and reviewed by judges, of the Central and Eastern European countries; in particular, of Bosnia-Herzegovina, Bulgaria, Croatia, Kosovo, Romania, Serbia and Slovakia.

The Bangalore Draft was revised in the light of the comments received from CCJE-GT and others referred to above; Opinion no.1 (2001) of CCJE on standards concerning the independence of the judiciary; the draft Opinion of CCJE on the principles and rules governing judges' professional conduct, in particular ethics, incompatible behaviour and impartiality; and by reference to more recent codes of judicial conduct including the Guide to Judicial Conduct published by the Council of Chief Justices of Australia in June 2002, the Model Rules of

Conduct for Judges of the Baltic States, the Code of Judicial Ethics for Judges of the People's Republic of China, and the Code of Judicial Ethics of the Macedonian Judges Association.

The revised Bangalore Draft was placed before a Round-Table Meeting of Chief Justices (or their representatives) from the civil law system, held in the Peace Palace in The Hague, Netherlands, in November 2002, with Judge Weeramantry presiding. Those participating were Judge Vladimir de Freitas of the Federal Court of Appeal of Brazil, Chief Justice Iva Brozova of the Supreme Court of the Czech Republic, Chief Justice Mohammad Fathy Naguib of the Supreme Constitutional Court of Egypt, Conseillere Christine Chanet of the Cour de Cassation of France, President Genaro David Gongora Pimentel of the Suprema Corte de Justicia de la Nacion of Mexico, President Mario Mangaze of the Supreme Court of Mozambique, President Pim Haak of the Hoge Raad der Nederlanden, Justice Trond Dolva of the Supreme Court of Norway, and Chief Justice Hilario Davide of the Supreme Court of the Philippines. Also participating in one session were the following Judges of the International Court of Justice: Judge Ranjeva (Madagascar), Judge Herczegh (Hungary), Judge Fleischhauer (Germany), Judge Koroma (Sierra Leone), Judge Higgins (United Kingdom), Judge Rezek (Brazil), Judge Elaraby (Egypt), and Ad-Hoc Judge Frank (USA). The UN Special Rapporteur was in attendance. The "Bangalore Principles of Judicial Conduct" was the product of this meeting.